Public Consultation on the Accounting and Auditing Provisions in the Companies Ordinance

Compendium of Responses

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Background

The Companies Ordinance (CO) is one of the oldest and most complex pieces of legislation in Hong Kong. We have commenced a major exercise to rewrite the CO in mid-2006, with a view to modernising our legal infrastructure to strengthen Hong Kong's status as a major international business and financial centre.

The rewrite exercise is thus conducted in two phases: Phase I on provisions affecting over 620,000 live companies in Hong Kong and Phase II on winding-up related provisions in the CO. A White Bill covering all Phase I provisions will be put for public consultation in mid-2009, before the new Companies Bill is introduced into the LegCo tentatively in the third quarter of 2010.

In the course of the rewrite, we will consult relevant professional bodies, the business community and company law academics, and leverage from company law developments around the world, particularly in the UK, Australia, Canada, New Zealand and Singapore. Topical public consultations will also be rolled out prior to the White Bill to gauge views on more complex subjects.

Consultation

The first public consultation of CO Rewrite was conducted from 29 March 2007 to 29 June 2007. We invited comments and views on the proposals relating to the accounting and auditing provisions in the CO. During the consultation period, we conducted a consultation forum on 4 June 2007, and attended forums and meetings organized by various professional bodies and chambers.

In addition to verbal comments we have collected on these forums and meetings, we have received 34 pieces of written submissions from 32 deputations. This document integrates all comments we have collected during the consultation period.

General Comments

Deputation	Comments
The British Chamber of Commerce	Whilst Hong Kong is to be congratulated on there being a significant number of Hong Kong company incorporations, we feel there could have been many more incorporations had the Companies Legislation in Hong Kong been made even more user friendly. In many cases, businesses which do not want to be audited (or prepare accounts for that matter) will often opt to incorporate through an offshore vehicle, instead of using a Hong Kong company. Hong Kong is one of the few major jurisdictions where local Hong Kong companies operate in tandem with so many offshore companies. We recognize that the Standing Committee on Company Law Reform (SCCLR) has been in existence since 1984, the last time there were significant amendments to Company Law in Hong Kong, and has subsequently made 62 recommendations for improving the Companies Ordinance, all of which have now been implemented. But we feel progress has been very slow on improving Hong Kong company law – more than 20 years has passed. To the extent that many businesses will use Company law from other jurisdictions which are more nimble in terms of reacting to market changes i.e. use of Cayman Islands and now British Virgin Island "BVI" companies for mutual fund structures is common. Consequently Hong Kong is missing out on many of these new areas in the financial services arena. In particular the (lack of) use of LLCs or LLPs (Limited Liability Companies and Limited Liability Partnerships) for professional practices, is also a concern, given the desire to keep Hong Kong at the forefront of the world financial markets, and the importance of the professional infrastructure in supporting that. We would therefore ask that any Company Law amendments which are approved be enacted more quickly, than the proposed timetable, if they are considered to be worthwhile. We note (from paragraph 1.7 of the Consultation paper) that the tentative timetable, means that the new Companies Ordinance legislation being consulted upon is not expected to be enacted until Q3 in 2010! May we add that the new BVI Business Company Law, which is perhaps the most modem, and most practical new company law, and which has completely restated the BVI International Business Company law from 1984, was implemented in less than two years. There are more companies on the BVI Company Register (over 1 million BVI companies at the time of writing) than there are on the Hong Kong Company Register. Do all Hong Kong companies need to be audited? In the UK, and in the US, small and medium sized companies do not require an audit. In the UK company accounts are filed at the Companies Registry and are available for public inspection; in the US company accounts are not available for public inspection and we believe that this latter approach would be acceptable for Hong Kong. Under the new proposals, all Hong Kong incorporated companies - even SMEs (see definition for Small (groups) of Hong Kong companies at para 7.3 - which are - not incidentally - the vast majority of Companies in Hong Kong) will still need to be audited. Although we are glad to see that they may use simplified accounts under the SME Financial Reporting Framework, to be introduced in 2008. We are also glad, that if the Government insists that all Hong Kong companies are audited, that Section 141D companies will need a "true and fair" audit report, which is likely to be adopted instead of the current and outmoded "true and correct" audit report. However, we feel this golden opportunity should be

Deputation	Comments
	taken to abolish the requirement for an audit for Hong Kong incorporated SMEs, and to bring Hong Kong into line with international practice. The result would be that more Hong Kong companies would likely to be incorporated, and fewer offshore companies. We understand that the Hong Kong Institute of Certified Public Accountants, who were involved in formulating the Consultation Document as part of the Joint Working Group, and who are responsible for issuing 'practising licences' for auditors believes it is vital that all Hong Kong companies should be audited. We beg to differ. Directors of companies should be responsible for their company affairs; an audit for SMEs should not always be required. This is the opportunity to amend the law in this regard. Smaller audit practices in Hong Kong also typically provide company incorporation and company secretarial services for both Hong Kong and offshore companies and they will be able to adapt to any new scenario. In fact many of these practices charge very low fees for small company audits, as audit has become a highly competitive and commoditised business. Such practices typically earn more from their secretarial business; they should be encouraged to become more advisory based rather than simply focused on compliance.
KPMG	Overall, we welcome the Government's efforts to make company law in Hong Kong more user-friendly and to provide Hong Kong with a modernized legal infrastructure commensurate with its status as a major international business and financial centre. In particular, we fully support the proposals to reform the extent to which private companies need to prepare financial statements which are consistent with full HKFRSs, and to simplify the process for distributing summary financial reports, whilst at the same time supporting the adoption of full HKFRSs by public companies. We also appreciate the efforts that have been made to seek to enhance the ability of the auditor to obtain information. However, some of the proposals in the Consultation Paper are of concern to us, as to whether they are consistent with the overall objectives of the re-write exercise. For example, we are concerned that unnecessary rigidity may be introduced through the proposals concerning a company's financial reporting period and that the disclosure requirements concerning business reviews and directors' remuneration may be unduly burdensome and unnecessary in the financial statements of private companies which are not placed on public record. We also have certain concerns about the practical implications of the proposed declaration from directors concerning the extent to which they have ensured that auditors are aware of all relevant audit information and the proposed extension of the rights of auditors to obtain information from a wide range of "specified persons". These concerns are explained in more detail in our responses to your questions in the attached appendix to this letter.
ACCA	Amongst the various proposals put forward in the consultation document, we agree to the proposals of the preparation of a more analytical and forward-looking business review in the directors' report, a separate directors' remuneration report, as well as the revision of the provisions regarding summary financial reports. We also agree to the proposed auditors' qualified privileges as well as the proposed right and obligation given to outgoing and resigning auditors. We are nevertheless concerned that:

Deputation	Comments
	• extending the right of inspecting a company's accounting records will result in disclosure of price sensitive information. We note that there are public concerns over this proposal as management may not want their results to be made available to their staff. • requiring directors to declare in the directors' report that there is no relevant audit information of which the auditors are unaware is a bit too stringent as it may be inappropriate to assume directors know what information the auditor is unaware. • requiring "specified persons" to provide auditors with information, explanations or other assistance to auditor may exert excessive and onerous burden on these "specified persons" who include officers or employees of the company. Obviously, employees who are not privy to relevant information will not be able to provide it and hence there should be some leeway to provide for such case. • removing the existing requirement of fixing the auditors' remuneration by a company in a general meeting and allowing directors to fix the auditors' remuneration appears to be a step backward on the track of corporate governance. • adopting the suggested qualifying criteria for the application of section 141D could lead to confusion should these be inconsistent with the International Financial Reporting Standards (IFRSs) for SMEs which will soon be finalised and released by the International Accounting Standards Board (IASB).
Canadian Certified General Accountants Association of Hong Kong	**STANDARD SETTING** At present, the form and content of financial statements are governed by the Companies Ordinance, the Financial Reporting Standards and the Listing Rules. As an international financial centre, the standards setting process should be simplified and fast enough to cope with the growth of globalization and international trends. CGA agrees the recommendation of the Standing Committee on Company Law Reform ("SCCLR") that the Financial Reporting Standards Committee (FRSC) and the Auditing and Assurance Standards Committee (AASC) should be widened to cater for more involvement of the public. Even better, these two committees should be independent from the HKICPA and adding representatives of other internationally recognized accounting bodies, which have local establishments, to the existing composition. The advantage is that the standards setting would respond faster to the global market needs and exhibits its international standing. **OTHER ISSUES** (a) The Companies Ordinance should use universally accepted terms rather than some with limited use, e.g. "*Accounting Reference Period (ARP)*", which is only used in the UK and Europe. It is similar to the "Financial Period" except for certain filing regulations, the term "Financial Period" should be used. The term "ARP" confuses the public, including accountants in other jurisdictions. The term "**True and Correct**" view is misleading. The word "Correct" has been replaced by "Fair" since the Company Act 1948 in the UK, recognizing that it is not possible to certify the "correctness" of accounts as some figures can only be fairly presented. Depreciation, goodwill, inventory and deferred tax etc, can only be "fairly" estimated, but hardly be arithmetically accurate. Keep using this outdated audit view for audited financial statements (regardless of the size) could give a

Deputation	Comments
	bad impression to or mislead account users. (b) To enhance the corporate governance, the responsible officers (Directors) should be personally accountable to certain non-compliance acts (e.g. filing of annual returns and financial statements) rather than the companies. Also, the inspection right of accounting records should not be open to staff below the Board level unless the Board agrees. Moreover, "other officers" are not well defined in the Companies Ordinance (such as managers). We believe companies would release the accounting information to different levels of staff when there is a commercial need. Overall, CGA is of the opinion that the rewrite of the Companies Ordinance should be based on the following dimensions: (a) The principle of simplifying the laws; (b) Fewer accounting jargons that are not universally known; (c) Striking the balance of stringent enough to eliminate irregularities of public interest companies (as above defined) but flexible enough to permit the expansion of legitimate activities, and (d) Reducing the cost burdens of limited interest companies.
The Chamber of Hong Kong Listed Companies	The Chamber supports a high level of corporate governance in Hong Kong, especially amongst listed companies, which constitutes, among others, transparency, efficient disclosure, effective communication and responsible behaviour of directors. We are also of the view that any change to the Companies Ordinance must not affect the level playing field. Given the special characteristics of the Hong Kong market where a great number of listed companies on the Hong Kong Stock Exchange are incorporated in overseas jurisdictions, thus subject to different sets of companies ordinances, we believe that changes to the Companies Ordinance that impose a more stringent requirement than the Listing Rules would be unfair to those listed entities that are incorporated in Hong Kong. In view of this, changes that would have an important impact on the listing environment are best dealt with in the Listing Rules instead of in the Companies Ordinance. This is to ensure a level playing field for all listed companies regardless their places of incorporation. At the same time, the Companies Ordinance applies to all companies that are incorporated in Hong Kong disregard their sizes. Certain requirements that might seem reasonable and acceptable for larger or listed companies could be very onerous to smaller entities. Therefore when evaluating the appropriateness of the proposed changes, we have also taken into consideration the impact on small companies as well. For questions that we do not give specific comments, we are in general agreement with them. The comments are made on the premise that the Company Ordinance affects Hong Kong domiciled companies, big and small; public and private. For smaller or private companies, the recommended changes could be costly to implement while on the other hand those changes would not apply to companies domiciled outside of Hong Kong, even though they are listed on the Hong Kong Stock Exchange. To do away with this anomaly, we believe some changes are best reflected in the Listing Rules in order to produce

Deputation	Comments
	a level playing field for all listed companies.
The Society of Chinese Accountants & Auditors	We share and support the aims of the Consultation Paper in saving compliance and business costs, improving disclosure and transparency, and enhancing compliance. In addition, the hidden aims and agenda should include the enhancement of Hong Kong as China's and Asian's International Finance Centre.
Association of Women Accountants (Hong Kong) Limited	We principally agree that improving the disclosure and transparency of the information in annual accounts, enhancing compliance with the relevant requirements and saving compliance and business costs incurred by companies are important for businesses in Hong Kong.
Selwyn Mar (Partner of Nexia Charles Mar Fan & Co.)	I refer to Section 121 of the Companies Ordinance and, in particular, subsection 4 and the provisos. In the last couple of years, certain listed companies' audit reports have mentioned the lack of "proper books of account". As the listed companies' financial statements are public documents, this type of qualification, therefore, comes to light. As private companies do not require their audited accounts to be filed, it is impossible to have any information of such offence. Having been involved in auditing for a number of years, I have come across a number of auditors' reports with respect to private companies carrying the notation that no proper books of account has been kept. I find that proviso in the said Section does not seem to make either common or logical sense. A director, particularly the managing director and/or finance director must be deemed to be fully aware of "the requirements of this Section". It seems to fly in the face of logic that the director could exonerate himself from obligations under this Section by saying "he had reasonable ground to believe and did believe that a competent and reliable person was charged." How can a director escape his responsibilities with respect to this particular Section by providing the excuse as mentioned? I, therefore, respectfully submit that the Companies Bill Team should visit this proviso and to give this particular Section some meaning. Further to my email of April 18, I would like to add, if I may, the situation as described in the attached chart and article published in one of the Chinese newspapers some years ago, which I believe is unhealthy to the extent that because of the cross-holdings, minority shareholders can do very little to make changes to the Board of the listed company even though it performs badly and the directors take out disproportionate amount of fees and remuneration. I, therefore, urge the Committee to debate whether cross holding provisions in the revised Ordinance should be similar to those in the U.K.

Deputation	Comments
Simon Y.T. Tsao	I refer to your recent announcements for the review amongst certified public accountants (hereinafter referred to as 'CPAs'). The questions put forward as I can see are on 'ad hoc' issues but ignore to view the fundamental problems. When the Government calls for regulation of the professionals, they have ignored the basic question – you strive for quality, but you do not remunerate them with quality. So what the professionals did is that they become risk-takers, as they call it 'risk management'. But can regulators take risk? They are not just risking their own profession, moreover, they are risking the public interests that are inherent in the issuance of the reports. Have we not learned from Enron? The second question that has been brought forward by this review is the so-called 'convergence' of the accounting standards. If companies registered under the Company Ordinance need to carry out audits and prepare accounts according to the 'Hong Kong Statement of Standard Accounting Practice' or general accepted accounting practice ('GAAP'), why are the unincorporated businesses need not follow the GAAP? How many companies and unincorporated businesses are being registered in Hong Kong (either with the Companies Registry or the Inland Revenue Department) and what is the proportion of those who applied and did not apply GAAP and the Inland Revenue still accepts those accounts? If the Government accepts two different approaches to people doing the same business, can we still call it GAAP? The purpose of the Registry is to regulate people doing business in Hong Kong and not just those who choose to be regulated. As I have previously reiterated, legal concepts are not something that you believe or I believe – it is what the general public believes and the yardstick is not from the professionals nor the Government, but the public and they should be invited to express their views as to whether the review should be a full review or in part. Following my previous letter to the review, I wish to highlight the potential problem underlying this reform which will affect both accountants and the public. As I understand, the Companies Ordinance sets out the criteria for disclosure, and that the accounting standards are merely to assist the Ordinance to put it into practice. Therefore, the accounting standards are the tools to assist the interpretation of the Companies Ordinance. I believe this is the reason why the formats of company accounts are shown as an appendix to the Companies Act in the UK. The contruction of the Ordinance takes into account of the difference in culture and economic environment of that specific society. I cannot see the convergence can be of any practical value to most of the Small and Medium Enterprises ("SME"). The revision of accounting standards of the Hong Kong Institute of Certified Public Accountants ('HKICPA') following global practice ahead of the revision of the Companies Ordinance clearly breached this basic rule of accounting framework. As shown in your website, your Honour have underlined the basis of the reform but the direction to align the Ordinance to the accounting standards is clearly contradicting the basic assumption of stewardship in the accounting theories. Global convergence is an ideal, not much practical assumptions have been put in place. If the saying that they need an universal account, they must remember the lesson in the Bible about Tower of Babel– this is a recognition of various culture and a respect to the difference of views. If anyone believes in universal accounting, they must be both innocent and naïve. As mentioned in my previous letter, I have drawn your Honour's attention to the application of accounting principals in unincorporated entities. Some sizable unincorporated entities have more assets than small companies incorporated under the

Deputation	Comments
	Companies Ordinance. In this review, I do believe your Honour should consider the application of accounting standards be extended to those unincorporated entities. As to how it can be applicable, I think the legal experts can be able to resolve such issue. Your Honour can consider the licencing of the Business Registration Certificate of unincorporated bodies be under the Companies Registry, and to bring along changes to the keeping of company records by unincorporated bodies same as that of the incorporated.
Arthur Lam, Arthur Lam & Co. CPA	Adding the definition of public company. We suggest to add the definition of “public companies” to the interpretation section, say: “public company” (“公眾公司”) is a company incorporation in this Ordinance other than a private company assigned to it by section 29 of this Ordinance." So public company would be easier to referred to and confusion can be prevented.
International Management Association	In the first place, it is important to keep the standard accounting of reporting to the company management. However, many of the companies prefer to cut cost instead of improvement in the accounts reporting quality. It is not hard to find that the reporting quality declined & affected the operation management & taxation matter. We advised that the preparation of the accounting ledger should be kept in Hong Kong if the operation of business & taxation matters are involved in the region of Hong Kong. It should not be allowed to prepare accounting ledgers & book-keeping in other regions, e.g. PRC, without exceptional permission if the business operation and income taxable is in Hong Kong. Such like many other countries, even for our mother land, PRC, the related accounting preparation always be kept in the region of the sovereignty if the business operation within their region if they preferred to tax in the same region. This can be discouraged by enhancement of penalty. As stated in (S) 121 (3), the books of account shall be kept at registered office of the company within six months. We hoped that the period should be shortened & always kept in Hong Kong so that the directors can inspect such accounts & returns with respect to the business dealt with in the books of accounts at any time. If amended as mentioned above, we expect that it would be a great assistance & enhancement in Corporate Goverance in Hong Kong. Besides, we would like to assert that the penalty for the default in filing documents to Companies Registry must be reduced. The Companies Ordinances are composed of more than 300 sections. Many of them impose heavy penalty & even imprisonment just for the missing lodgement of company secretary documents e.g. Dl, D2A, AR1 to Companies Registry. Many officers, directors or company secretary to expose to a litigation risk every day. In the past, some officer or directors even were sent to the court just only with a unintentional mistake in default of filing an annual return after a penalty payment. In the nowdays business world, we need to handle too much documents & filing. The penalty stated in Companies Ordinance must be lessened if the mistake is unintentional. The related heaviest penalty should not be imprisonment. The amount of fine penalty must be reduced much less.
Hon. Mandy Tam Heung-man	This submission aims at proposing some principles and points to note relevant to the rewrite of the ordinance. It also elaborates the rationale behind each principle proposed.

Deputation	Comments
Legislative Councillor (Accountancy Functional Constituency)	**<u>Major Proposals</u>** **1. Standard Setting** Certain disclosure requirements and technical accounting standards are currently stated in both the Companies Ordinance and Hong Kong Financial Reporting Standards (HKFRSs) issued by the Hong Kong Institute of Certified Public Accountants (HKICPA) or in the Listing Rules of the Hong Kong Exchanges and Clearing Limited (HKEx). Such overlapping in both legislation and regulations may be contradictory or lead to confusion. Hence, it is proposed that the new Companies Ordinance excludes some requirements and technical standards which have already been included in the HKFRSs or the Listing Rules. Such confusions may arise when there are amendments in some accounting standards and Listing Rules which may appear more frequently than do amendments in the related legislation. The time lag between the amendments may lead to two sets of regulatory measures which could be contradictory. Furthermore, in the long term, the setting of disclosure requirements and accounting standards should be left to the HKICPA and the HKEx. Alternatively, we can consider establishing an independent body responsible for setting accounting standards which includes representatives from the government, accounting professional bodies, HKEx, Securities and Futures Commission and other independent members from the accounting profession. **2. Segmentation of Corporations and Transformation of Audit into a Statutory Review** The government suggests in the consultation paper that corporations should be segmented into large corporations and SMEs according to size with thresholds of turnover, assets and employees, and that two sets of different financial reporting standards be imposed on the two types of corporations. However, this manner of segmentation may cause difficulties to both enterprises and accountants. Experience in some overseas countries, including the United Kingdom, has suggested that the definition of SMEs may vary frequently every three or four years when taking account of recommendations of EC Directives. Such variation is prompted by the effects of inflation, deflation and economic cycles. For those corporations with a size near to the category margins, such a variation of definition may lead to a change of disclosure requirements imposed on them and cause difficulties. It is suggested that corporations be segmented according to the level of their relativity to the public interest. Under such a benchmark, corporations may be segmented into two categories: (1) self-owned companies or limited interest companies; and (2) public interest companies. Self-owned companies are defined as companies in which not less than 75% of the shares are controlled by the directors, officers and the related parties. Such companies are less related to public interest and a moderate level of assurance of their financial statements is acceptable by the limited user groups. Therefore, it is proposed that the audit requirements imposed on such companies be replaced by statutory review requirements, which provide a moderate level of assurance to financial statements. The

Deputation	Comments
	standards of such a report may be set according to the review engagement standards adopted universally. Public interest companies are defined as follows: (a) listed companies; (b) companies with less than 75% of shares controlled by its directors, officers and related parties; (c) charitable agencies; (d) banks and financial institutes, (e) insurance companies, (f) investment brokers etc. Financial reports of a higher level of assurance should be imposed on such companies. The audit requirements may, therefore, be kept for these companies and tightening of some requirements may also be considered. **3. Non-compliance of the Ordinance** Currently, companies, including shareholders, are penalized instead of the directors when there is non-compliance of the Ordinance. The new legislation should ensure that the responsibility for non-compliance rests with the directors. The Consultation Paper also proposes that the inspection right of non-compliance may be opened to “other officers” such as managers and secretaries. However, such a proposal should be considered very carefully. Firstly, the proposal does not clearly define the term “other officers”, including that of “managers”. Secondly, if we open the right of inspection to “other officers”, such individuals may get access to confidential commercial information, such as payroll, to which they are not entitled. **4. Progress of Rewrite of Ordinance** It is understood that the current proposal to rewrite the Companies Ordinance is mainly based on the last rewritten Companies Act of the United Kingdom. If so, the progress of the rewrite should be accelerated as the United Kingdom is now further rewriting the Companies Act. We are lagging far behind; the gap between the global standard and ours will become increasingly wide if we do not speed up our progress. 5. **Replacement of the Concept of True and Correct View** The term “True and Correct” view under Section 141D of the Company Ordinance is misleading. The word “Correct” has been replaced by “Fair” since the 1948 Companies Act in the UK, recognizing that it is not possible to certify the “correctness” of accounts as some figures can only be fairly assessed. Depreciation, goodwill, inventory and deferred tax etc, can only be “fairly” estimated, not arithmetically precise and accurate. To keep using this outdated view for audited financial statements (regardless of company size) could give a bad impression to, or mislead, account users. Moreover, the term “True and Correct” is rarely found in international auditing text books today.
The Association of International Accountants	1. Private companies, unlisted public companies, and listed public companies are subject to different regulations and accounting and auditing provisions. To enable the general public to identify a company’s status readily and the applicable regulations, it is suggested that the name of a company should be distinctive of its status, e.g. • a private company - ABC Private Limited (or ABC Pte Ltd), • a listed public company - ABC Plc,

Deputation	Comments
	• an unlisted public company - ABC Limited, and • a guarantee company - ABC (limited by guarantee). 2. Directors of a company are required to take reasonable steps to ensure that financial reports, auditor's report and directors' reports are distributed to every shareholder according to the register of members. 3. Distribution by a listed company of financial reports, auditor's report, and directors' report in CD should be encouraged over printed copies by new legal provisions. 4. Penalties for non-compliance of any provisions in the CO should be heavy enough to work as deterrent.
Hong Kong General Chamber of Commerce	Besides, we have also identified a number of issues which require more direction and clarity. Key issues of concern include: ➢ An unnecessary shifting of responsibility from auditors to directors (the latter are already required to declare to auditors that they have provided all relevant information); ➢ Questionable requirements to include more forward-looking statements in company accounts, which by their nature will not meet rigorous standards; ➢ Overly broad terminology regarding disclosure; ➢ Expansion of the right to inspect accounting records to include senior non-director management (a concern shared with SMEs); ➢ Efforts to expand the powers of the Companies Registry; ➢ Restrictions on (re)aligning accounting reference dates; ➢ Discrepancies between accepted accounting standards and proposed Companies Ordinance amendments (e.g., accounting guidelines require publicly traded debt instruments be consolidated into group accounts, whereas the proposed amendments waive such a requirement); and ➢ Unnecessary efforts to include current - and evolving - accounting standards in the Ordinance (such issues are best left to accounting standards bodies).

Compendium of Responses

<table>
<tr><td colspan="2">Question 1
(a) Should the right of inspecting a company's accounting records be extended beyond directors to other officers of the company (such as managers and secretaries)?
(b) Do you agree that the court may, on application by a director, allow a person to inspect a company's accounting records on behalf of the director on such terms and conditions as the court may think fit?</td></tr>
<tr><td>The British Chamber of Commerce</td><td>(a) We do not agree as a general proposition that officers other than directors should have the right to inspect the company accounting records. In all cases, persons inspecting records should have been authorised to do so first by a director.
(b) Agreed.</td></tr>
<tr><td>Robert Kenrick</td><td>(a) Yes, as long as "officers" is interpreted strictly in accordance with s.2 of the Ordinance (i.e. a "manager" reports immediately to the board.)
(b) Yes</td></tr>
<tr><td>Arthur Lam, Arthur Lam & Co. CPA</td><td>Regarding (a) above, we think it is only appropriate to extend the right to inspect the company's accounting records to secretaries and "other senior managers".
Secretaries who often assist to make routine for declare dividends and, in some cases, have other duties as senior management shall have the right to inspect the accounting records. For example, the secretaries could be sure a company have the liquidity to distribute cash dividends.
Though the existing Companies Ordinance have defined that "managers" mean a person have the immediate authority to the directors, managers in some case still may be a very junior staff in the contemporary office automation environment. Thus, a senior management personnel (for instance, an Chief Executive Officer) shall have the right to inspect the company's accounting records, so that any fraud may more timely reported.
Regarding (b) above, we think a director who take up the duty as the directing mind and hold out as the leader of a company shall be empowered to exercise reasonable means to achieve his duties, including make sure the company is operated properly and stay away from crimes. Given the speed of make large volume of transactions within an extremely short period of time in this internet age, an unnecessary time delay could cost the stack holders of the company potentially large losses. When a director is appointed, he/she shall be entrusted for one's integrity and loyalty to the company. We shall, in absent of reasonable ground, believe a director would normally invite an outsider to inspect the accounting records for the benefits of the company. As a result we support that a director be allowed to seek help from an accountant for an inspection of company's accounting records <u>without approval from court.</u> However, there may be other alternative steps or formality to be done before such an action is taken: for instance, it may be required to have a board resolution, a simple majority of an EGM or giving a short notice to the secretaries of the company</td></tr>
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	(provided the secretaries and the director seeking the help for inspection are independent persons). *We suggest to state more clearly that whether the person have the right to conduct such an inspection be confined to:* *a CPA,* *a practising CPA,* *a lawyer,* *an person have the experience and knowledge in forensic accounting, or/and* *a qualified examiner (ex-police officer).*
Paul Mok	*(a) I do not believe that the right of inspecting a company's accounting records should be extended beyond directors to other officers of the company. A company's accounting records are of paramount importance and the right of inspecting such records should be restricted to the directors having statutory duties only. Moreover, it is difficult to define legally "officers" and "managers".* *(b) I agree that the court may, on application by a director, allow a person to inspect a company's accounting records on behalf of the director on conditions including the following:* *1. The person authorized to inspect records may use the information obtained during the inspection only for the specific purpose approved by the court;* *2. A person authorized to inspect records may not disclose the information acquired by him during his inspection to anyone except the appointing director; and* *3. Making copies of the records is not allowed unless the court orders otherwise.*
Victor Ho	*(a) Yes. However, it is suggested that the rights of inspecting the company's accounting records should be extended beyond the directors to the <u>Personnel Staff</u>, on the following ground that in the preparation of the tax returns, wages calculation and payment the staff have to check the accuracy of the relevant financial data. Currently, it is very common for the personnel to rely the financial data from the accounting department. In some organizations, the Personnel department is in a position to keep remuneration record of Chief Executive Officer and Chairman.* *(b) Yes. However, will the Court, <u>upon application of a denture holder</u> allow a professional such as a Certified Public Accountant to inspect the books of the Company? In addition, such person applying to Court has the obligation to notify the Company of such course of action.*
The Institute of Accountants in Management	*(a) & (b) Yes*

KPMG	(a) *We do not see any need to provide for such persons to have a right in law to inspect the books, as the extent of these persons' duties and responsibilities concerning the financial records will have arisen from their terms of engagement with the company, rather than being prescribed by law. Access to the books and records is therefore a matter to be dealt with on a case by case basis when the company assigns these persons their responsibilities.* (b) *Yes, we agree with this proposal for the reasons set out in paragraph 3.5.*
Respondent A	(a) *Yes, we agree with the proposal.* *However we note that the accounting records may contain highly sensitive confidential information, such as information relating to future transactions. Consideration should therefore be given to permitting the withholding of such confidential information from other officers where it is in the best interest of the shareholders to do so.* (b) *Yes, we agree provided that the enabling provision and any court order will be specific and not general in nature.*
ACCA	(a) *We do not agree to this proposal. Under the current CO requirements, the obligation of the preparation of accounts lies with the directors of a company instead of officers of the company. Without an obligation to prepare the accounts, we do not consider it necessary for officers to have the right to access the books and records.* *We also note that there are concerns amongst the public regarding this proposal, in particular, SME owners may be unwilling to disclose their results to their staff whilst management of listed company have a concern of disclosing price sensitive information. This proposal appears to contravene the fundamental rationale for setting up* ***private*** *companies.*
The Law Society of Hong Kong	(a) *Statutory rights should be conferred for a purpose, for example to protect an interest which requires statutory force or to facilitate the proper discharge or performance of a legal duty. Company officers such as manager and secretaries have no statutory obligation for the contents of company accounts. Any obligations incurred by them for preparation of company accounts would be owed only to the directors. If the information given to them shall not be sufficient to prepare company accounts properly, they could ask the directors to provide. How the directors respond to such request is an internal matter for the company. Unless a good reason exists, the company law should not over legislate on internal management matters.* *It is also difficult to see why managers and secretaries would want to take the initiative to seek a court order against the company for whom they work for disclosure of information. A restricted right of inspection may, however, be given to officers of the company who need to provide information to the auditors under section 141C(5) in order for them to provide the requisite information.* (b) *Agree. The directors take collective responsibility for the correctness of company financial statements. The power to compel the inspection of company accounts by agents or advisers appointed by a director may address concerns which a director may have over the accuracy or completeness of the financial statement and related disclosure before he gives his approval to the accounts.*
Deloitte Touche	(a) *The proposal that the right of inspecting a company's accounting records should be extended beyond directors to other*

Tohmatsu	*officers of the company would seem to raise a number of questions. Should companies not be free to determine for themselves how best to disseminate internally accounting and financial information taking into account 1) confidentiality and 2) the different information needs of different officers? More practically, how are other officers to be defined? In the case of public companies, is it wise to widen the right of access to price sensitive information? How exactly would the proposal enhance the operation of the company? In asking these questions we do not mean to suggest that effective internal dissemination of accounting and financial information is not a characteristic of a well managed company. It is not clear, however, that such an outcome is best achieved through legislation.* *(b) We agree that the court may, on application by a director, allow a person (such as a certified public accountant) to inspect a company's accounting records on behalf of the director on such terms and conditions as the court thinks fit. In 3.5 the focus seems to be on the new provision being intended to assist directors in discharging their routine albeit extended duties. The very existence of the new provision could be expected to have the effect of empowering directors, and particularly non-executive directors, in this regard. An equally important point surely is that the new provision would empower directors to discharge their duties effectively in non-routine circumstances.* *N.B. Looking ahead, for the reasons given in footnote 16 on page 16 of the Consultation Paper, we would welcome the proposal to introduce a requirement for directors' declarations stating that the accounts give and true and fair view and that the company is solvent.*
Canadian Certified General Accountants Association of Hong Kong	*(a) No, the other officers may not be appropriate to access some confidential information associated with the accounting records.* *(b) Yes, but the person must be qualified accounting or legal professionals.*
The Hong Kong Institute of Chartered Secretaries	*(a) We agree that the right to inspect the accounting records should be extended beyond directors to other officers whose duties are to assist in the preparation and keeping of accounting records of the company and/or to advise on the corporate governance of the company. The integrity of the financial statements and accounting records is an important facet of the corporate governance of a company. Hence, company secretaries who are the officers of the company and are tasked with the duty to advise on the corporate governance of the company should have the statutory right of access to its accounting records.* *Given the confidential nature of the accounting records, we have concern about the proposal of extending the inspection right to other officers such as the company managers who are very widely defined in the Companies Ordinance ("CO"). Easy access to the accounting records can be harmful to the company as it may put it in a vulnerable position in respect of various forms of misconduct such as insider trading or leakage of confidential information.* *(b) We agree with this proposal. It serves to protect the interest of those directors who need professional support in discharging*

	their duties as directors. It is anticipated that more directors will require such kind of support in view of the increasingly sophisticated and complicated regulations which may substantially increase their potential liability. However, we suggest that those given the inspection right by the court should be subject to a statutory duty of care and confidentiality.
CLP	*(a) We have no objection to the proposal to extend the right of inspecting a company's accounting records beyond directors to other officers of the company who are tasked with the duties to assist in the preparation and keeping of the accounting records of the company and/or to advise on the corporate governance and system of internal controls of the company. However, "other officers" of the company should be clearly defined in the Companies Ordinance.* *In the case of listed company, a possible definition for "other officers" of the company could be the senior management who have been identified and disclosed in the annual report of a company and the company secretary who is appointed by the board.* *(b) We support the proposal that the court may, on application by director, allow a person to inspect a company's accounting records on behalf of the director on such terms and conditions as the court may think fit. The new provision would provide additional professional support to directors including independent non-executive directors in discharging their duties which have become more extensive and demanding as a result of the increasing regulatory requirements and consequential potential liabilities. This would particularly be useful in the recruitment of independent non-executive directors without accounting background.*
The Association of International Accountants	*(a) No, except the Chief Accounting Officer (or other titles or styles) and other persons who are appointed by the company to assist the directors in keeping the accounting records, and the Internal Auditor who is appointed by the company and who should have unfettered right of access to all records kept by the company (including financial and accounting records). It is hardly conceivable that the performance of duties by the company secretary and other managers in the ordinary course of business will require access to the accounting records. Moreover, some of the managers may not have the appropriate accounting knowledge to understand the accounting records and use the information contained therein. In any event, if they do need any financial information for legitimate purposes, they can make appropriate request to the Chief Accounting Officer of the company.* *Restricted access to accounting records of a company is particularly essential to exercise proper control over price-sensitive information of a listed public company.* *(b) Yes. However, the court must be satisfied that the applicant has reasonable grounds to make the application before granting leave to inspect.*
Hong Kong Institute of Certified Public Accountants	*(a) We do not believe that the right of inspecting a company's accounting records should be extended beyond directors to other officers of the company unless those other officers (however defined) have legal responsibilities with respect to the company's accounting records. We do not see any need to provide for officers without specific legal responsibilities to have a general right in law as the extent of these other officers' duties and responsibilities concerning the financial records will have arisen*

	from their terms of engagement with the company. Access to the books and records is therefore a matter to be dealt with on a case by case basis when the company assigns these persons their responsibilities. *(b) We agree with the proposal which is aimed at ensuring that a director, including an independent non-executive director, would be able to received necessary support in discharging his/her duties which have become more extensive and demanding in recent years.* *We consider that this inspection should be subject to the following constraints:* • *The person authorised to inspect records may use the information obtained during the inspection only for the specific purpose approved by the court* • *A person authorised to inspect records may not disclose the information acquired by him during his inspection to anyone except the appointing director* • *Making copies of the records is not permitted unless the court orders state otherwise.*
Ernest & Young	*(a) Because managers and secretaries have no statutory responsibilities for the financial statements of a company, we do not agree to the proposal to give such rights to other officers (such as managers and secretaries) under statutory provision. However a company should be able to grant other officers such rights through its internal procedures should it so decide.* *(b) We agree with the proposed change.*
HKEx	*I would support the two proposals but in respect of Question 1(a) the law should be prescriptive as to which level of senior management personnel are permitted to have access. The legislation should also contain provisions as to confidentiality. Where the company concerned is a listed company, or is a subsidiary or an associated company which contributes to a substantial portion of a listed company's results, allowing the release of the company's accounting records to a wider audience without safeguards may result in the undesirable and greater risk of improper release of price sensitive information concerning a listed company.*
The Chamber of Hong Kong Listed Companies	*(a) We feel that the right to inspect a company's accounting records be extended to officers of the company only under special circumstances or when it is absolutely necessary, for example, when the officers need to defend themselves under a lawsuit. For non-listed entities, opening the books to the staff might not be to the best interests of the owner.* *(b) We agree that persons, who are duly authorized by directors and acting on behalf of such directors, and with a court order, can inspect a company's accounting records.*
CPA Australia	*(a) The separation of owners (shareholders) from those running the business (chief executive officer or CEO and management) demands an internal, organizationally-based corporate governance control (the board of directors or BOD) of the company to safeguard its assets. It is widely accepted that the primary function of the BOD is to monitor the actions of managers so as to protect the shareholders' interests by means of hiring, firing, and evaluating and rewarding both the CEO and top managers.* *As noted in the commentary it is common practice for companies to employ managers to operate the company's business and*

	for company secretaries to assist in the keeping and preparation of legal documents and statutory records. The extension of the right of inspection of accounting records to other officers will enhance the operation of the company as well as enhancing the corporate governance regime by providing an additional set of checks and balances between the BOD and those responsible for enacting the directions from the board. *The main question to be answered is to which officers should this right be extended to? In the first instance this right should be extended to company secretaries as they already have access to a significant amount of company information. Secondly the right should be extended to the most senior company officers (which are not members of the BOD). If access is restricted to these two groups then there should be no issues with regards to sensitive company information as both groups normally have confidentiality agreements in place as part of their employment contracts as well as common law obligations as company employees to safeguard company information.* *It must be noted that the extension of inspection rights to other company officers and managers should never remove the fiduciary duty that a director has to act for the benefit of the company as a whole. In addition the granting of inspection rights to a company's accounting records to other company officers does not create a fiduciary obligation to the company on these officers.* *(b) As stated in paragraph 3.5 on page 17 the purpose of this proposal is to ensure that a director, including an independent non-executive director (INED), can receive necessary support in discharging his/her duties which have become more extensive and demanding in recent years.* *This proposal formalizes current market practices where directors and company officers call upon auditors, financial specialists, taxation experts and other consultants to provide them advice with regards to the company's operations as well as accounts. For instance it is common practice in the life insurance industry for actuarial consultants to provide advice on the valuation of a company's assets and liabilities or for a general practice surveyor to provide valuations of property assets owned by a property company.* *This proposal will enhance corporate governance within an organization as it provides a mechanism for a director to seek independent and objective advice which can help the director to form a better opinion about the company's accounting records.* *However, a number of issues must be defined (such as when is it appropriate for the director to seek assistance, how frequently can this be done and which party is responsible for the payments of said advice) to ensure that directors do not abuse this right. However it will also be important to ensure that the definitions are not too prescriptive about the reasons a director might require advice and when they may request assistance.* *In addition if the director is incapable of carrying out their fiduciary obligations then rather than continuously relying on third parties the director should resign. Again it must be noted again that the extension of inspection rights to those appointed by a court order should never remove the fiduciary duty that a director has to act for the benefit of the company as a whole.*

The Society of Chinese Accountants & Auditors	*(a) We have reservation on this proposal. In order to preserve the privacy and confidentiality, the right of inspecting a company's accounting records should not be extended beyond directors to other officers of the company who do not have the duties and responsibility over the accounting records.* *(b) We support this proposal. For example, the independent non-executive directors of listed companies can be better assisted by the experts and professional persons. However, the court should give clear directions as to the purpose and use of the financial data so collected.*
Association of Women Accountants (Hong Kong) Limited	*Right of inspecting a company's accounting records provided by legislation should be in cognition with the responsibility of their preparation.* *Directors of a company are primarily responsible for keeping proper books and records, therefore the directors must have a right to inspect the company's accounting records at all times. Accounting records of a company may not be regarded as useful information to all officers, including company managers and secretaries of a company. In addition, accounting records comprise confidential information including the profit or loss of a company and sensitive salaries records, and the actual level of an employee is not comparable from one company to another even though the titles of the position of the employees are similar. In view of this, it may not be appropriate in general terms and without restrictions extending the right to inspect the company's accounting records to officers other than directors of a company.* *It is our view that the right to access the books and records shall be confined to company's directors and the autonomy of releasing the accounting records to other officers of a company including managers and secretaries shall rest with the directors.*
Hong Kong Bar Association	*(a) The Bar supports this recommendation and invites the Financial Services and the Treasury Bureau ("FSTB") to consider the following matters relating to the extension of the right of inspection.* *First, the scope of the right of inspection. The recommendation, as it now stands, is only focussed on the director's right to inspect the "books of account" of the company under s.121(3). Although "books of account" is not defined in s.121(3) or elsewhere in the Companies Ordinance ("CO"), it can safely be assumed that they are limited to the 3 categories of documents described in s.121(1).* *If the purpose of conferring the right of inspection on other officers is to assist those officers to perform their duties in relation to the operation of the company, it is necessary to consider whether the right should be extended to cover all the books and records (not just accounting records) of the company. A director's right to inspect all the books and records of the company is a right enjoyed by the director under the common law and extends to all documents which are necessary to enable him to carry out his duties as director, see Conway Petronius Clothing Co Ltd [1978] 1 WLR 72 at 89H-90A, per Slade J. Moreover, the exercise of a director's rights of inspection is generally not a matter which the court would interfere with unless it could be proved that a director intends to abuse the confidence in relation to the company's affairs and to injure the company in a material way (Re Boldwin Construction Co Ltd [2001] 3 HKLRD 430 at 432H, per Rogers VP.)* *Thus, where the responsibility of managing the company is delegated to or shared by other officers, it is only logical and*

	appropriate that the right of inspecting the company's books and records (not just the right to inspect books of account) should be extended to such officers. In fact, such an extension is consistent with the extent to which a member may inspect the records of the company under S.152FA which only came into effect on 15 July 2005 and which empowers the Court to make an order authorising the member to inspect any "records" of a company. *Second, the <u>class of persons</u> to whom the right should be conferred. The proposal names "managers and secretaries" as examples of "officers" to whom the right to inspect a company's accounting records should be given. We note that the proposed extension is consistent with the definition of "officer" under the s.2, which defines "officer" as "includes a director, manager or secretary". "Manager", in turn, is defined as "a person who, under the immediate authority of the board of directors, exercises managerial functions but does not include –* *(a) a receiver or manager of the property of the company; or* *(b) a special manager of the estate or business of the company appointed under section 216".* *By the above definition, one can readily see why it is advisable to extend the right of inspection to a "manager" who, by definition, is a person entrusted by the board of directors and charged with the responsibility of managing the company. The same, however, cannot be said of a secretary who is normally charged with the administrative duties such as the preparation and filing of statutory records. Further consideration should be given as to whether there is any basis or justification for extending the right of inspection to the secretary of the company.* *Third, whether in extending the right of inspection to other officers, there should be <u>safeguards</u> against possible abuse of the right. The need for safeguards stems from the fact that unlike a director, a manager is only an agent of the company and, therefore, does not owe the same fiduciary duties to the company. Moreover, the duties of a manager are also less extensive than the duties owed by a director. Thus, consideration should be given as to whether safeguards similar to those in s.152FA(3), viz., the exercise of the right to inspection must be made in good faith and for a proper purpose. The absence of the safeguard of fiduciary duties is compensated by a reversal of burden[1] of proof, and a similar method may be adopted in the case of officers.* *(b) The Bar does not support this recommendation. It is well established that where a person, be it a member or director, has a right under the CO or the articles of association to do certain acts, that right can always be exercised by his agent or representative, The agent or representative will be bound by the same duty as to confidentiality as the principal. In the context of inspecting company's books of account, it is more often than not carried out by accountants or other authorized representatives. As stated in <u>Edman v Ross</u> (1922) 22 SR (NSW) 351 and <u>Re Boldwin Construction Ltd</u>, supra, at §22, it is a perfectly acceptable course for the director to engage an accountant to conduct the inspection.*

[1] In the case of a director's inspection, the director does not have to explain why inspection is sought, and it is for the party opposing inspection to show abuse of confidence, see <u>Boldwin</u> 436G.

	If new provision is enacted to empower a director to apply to the court to allow a person to inspect the company's records on behalf of the director, it will certainly be interpreted to mean that unless the court so orders, the director does not have the right to appoint his agent or representative to carry out the inspection. This will undermine rather than enhancing the director's right of inspection.
Hong Kong General Chamber of Commerce	*(a) On inspection of records, it is understandable to enhance the right of auditors to obtain additional information in performing their audit. On the other hand, we are concerned if the same right of access to company records is given to staff, thus resulting in SME employers having to explain to staff and possibly revealing confidential information such as their asset and estate, or income of directors or staff members. Misinterpretation of such information may breed ill-founded allegations by staff to government departments such as Labour, Inland Revenue, Police or ICAC, which would affect innocent SMEs unnecessarily.* *While we appreciate the rationale of transparency, it should perhaps be nurtured through a culture-change, such as that in Europe, rather than hurried through legislation. In the case of Europe, a more educated and better-informed workforce, with the backing of the social safety net, are much less likely to misread financial statements or draw wrong conclusions about an SME's financial health and thereby generating unnecessary anxiety about their job security, with potentially disruptive impact on the SMEs.*
The Chartered Institute of Management Accountants	*(a) For corporations these information will be price sensitive thus should be kept confidential; Not justified for SME; Difficult to have a balance among the two* *(b) Yes*

Question 2 **(a) Do you agree that the CO should be amended to require each company to have a fixed accounting reference period?** **<u>IF YES</u>, do you agree that:** ***<u>For a newly incorporated company:</u>*** **(i) it should be allowed to appoint a day as its accounting reference date through a directors' resolution, provided that the first accounting reference period should be (counting from its incorporation date) as mentioned in paragraph 3.8(a):** **- not less than six months?** **- not more than 18 months?** **(ii) if there is no appointed date under (i) above, the accounting reference date should be the last day of the month of its incorporation anniversary as mentioned in paragraph 3.8(a)?** **(iii) in either case, the subsequent successive accounting reference periods should be 12 months each?** ***<u>For any other company:</u>*** **(iv) the accounting reference date should be the anniversary of the end-date of the company's most recent accounts laid at its AGM?** **(v) the first and subsequent successive accounting reference periods should be 12 months each?** **(b) Do you agree that each company should be allowed to alter its accounting reference date through a directors' resolution?** **<u>IF YES</u>, do you agree that:** **(i) the accounting reference period should not be extended to more than 18 months?** **(ii) such alteration should not occur within five years since the last extension of the accounting reference period, save for the purpose of aligning the accounting reference date with that of its holding company?** **(iii) in the case of a public company, the resolution should be filed with the Registrar of Companies for public information?** **(c) Do you agree that the CO should be amended to require each company to have a fixed financial year, i.e. the same as the accounting reference period, except that directors may alter the last day of the financial year by plus or minus seven days?**	
The British Chamber of Commerce	*We can think of situations where the 5 year limitation, is not appropriate. Whilst we know this specific aspect of these proposals follows UK company law we think it is too restrictive.*
Robert Kenrick	*(a) Yes* *(b) Yes* *(c) I agree that the directors should have the ability to vary the accounting period by plus or minus seven days (to accommodate 52/53 week accounting periods.) While noting that the terminology follows ss.390 & 391 UK Companies Act, I find the co-existence of the terms "financial year" and "accounting reference period" confusing. Would it not be simpler to allow the directors to vary the accounting reference date by plus or minus seven days without notice to the Registrar of Companies provided that the accounting reference date so determined should not differ from that notified to the Registrar by more than seven days.*

Arthur Lam, Arthur Lam & Co. CPA	***Regarding (a) above**, we do not agree that there shall be a fixed accounting reference period. Least the consent reach to support a fixed accounting reference period, we still have the following comments.* *We do not see a reason to restrict the first accounting reference date to a minimum of 6 months. For example, a newly incorporated company which incorporated in July is prohibited to let its parent (whose year end is 31 December each year) to accounts for this subsidiary promptly.* *Meanwhile, a maximum of 18 month for the first accounting reference period is acceptable given the existing law for holding the first AGM within 18 months from the date of incorporation.* *We again do not accept that a mandatory 12 month accounting period shall be imposed on a company which fails to make an election of accounting period.* *But we concurred that a newly incorporated company shall normally have subsequent periods fixed to 12 month periods.* *We have no comment on part (iv), as the "other" company normally do so without the enactment of this provision. Again the subsequent periods of the "other" companies shall normally have 12 month periods.* ***Regarding (b) above**, we support that companies shall have the liberty to alter its accounting reference period.* *We think a maximum of 18 month restriction is a reasonable proposal.* *But all it need shall be a justification. And we do not see the reason for impose a proposal 5-year bar for subsequent alteration. If company have a good reason to do so; the company shall not be prevented from making such a change in all circumstances. Say, a company have engaged to have a new senior management to replace the old management who are accused to have poor performance. The new management may request to have immediate cut-off in accounting period. So the comparison of the performance under different management could be objectively measured. But the company have only recently changed its accounting reference period four years ago. Shall we make the law in a way that the business is taken away its liberty for showing stewardship of each management.* *We agree listed company may be required to have the solution for the alteration filed with the Registrar of Companies.* ***Regarding (c) above**, if the law is required so, we consider there is constructive to have a plus-or-minus-seven-day period. It would be desirable for a Hong Kong subsidiary of an overseas parent company.*
Paul Mok	*(a) Yes* *(b) (i) Yes* *(ii) NO, I prefer giving companies more flexibility in extending their accounting reference dates, even though I reckon that in the UK such alteration is not allowed unless:* *1. the company is subject to an administration order;* *2. the Secretary of States has directed this; or*

	3. the company is aligning its accounting reference date with that of its subsidiary or parent undertaking established within the European Economic Area. *(iii) Yes* *(c) YES, this will provide more flexibility to the companies.*
Victor Ho	*(a) & (b) No Comment*
KPMG	*(a) We have not noted any concerns with the current legislative provisions in this regard, for example we have not noted a tendency for companies to change their financial reporting period frequently or arbitrarily. We therefore do not see the need for the additional provisions However, we would not object to them, subject to the comments below concerning the restrictions on the change of reference date that are being proposed.* *(i) We agree with having a maximum period of 18 months for the first accounting period. However, we do not support the proposal to mandate a minimum initial period of not less than six months. We do not see the need for this requirement and consider it unnecessarily restrictive.* *For example, if a company was incorporated in September 2007 and wished to adopt a December year end, we do not see the need to prohibit that company from preparing financial statements for the three month period ended 31 December 2007. If the company chose to prepare such financial statements this would enable the entity to prepare its 2008 financial statements on a calendar year basis, with comparative amounts covering the initial three month period, rather than covering an initial 15 month period with no comparatives. In our view, such financial statements would be more informative for the reader and should not be prohibited.* *(ii) We consider it unlikely that the directors would not determine an appropriate accounting reference date, but do not object to the proposal.* *(iii)~(v) We agree, subject to our comments below concerning ability to change the accounting reference date.* *(b) We agree that each company should be allowed to alter its accounting reference date through a directors' resolution.* *(i) We agree with this restriction.* *(ii) We do not agree with this restriction. We do not see the need to restrict the alteration to being only every five years, on the basis that in our experience companies will only change their accounting reference date for sound operational reasons and not arbitrarily.* *In our experience such reasons are not restricted to a subsidiary aligning with its holding company. For example, if a Hong Kong incorporated holding company acquired significant subsidiaries in a jurisdiction where the accounting reference date was determined by statute, the holding company may decide to amend its own reporting date to align with that of its subsidiaries, as it is not legally able to amend the subsidiaries' reporting date. Other reasons may include a shift in the seasonality of its operations (for example, as a result of expansion into the Southern hemisphere), which*

	result in a change in the most efficient reporting date for cut-off purposes. *We consider that it would be a sufficient safeguard to require the directors' resolution to state the reason for the change in reporting date, with the added proviso (as proposed) that the resulting accounting period is no longer than 18 months.* *(iii) We agree with this proposal.* *(c) We agree with this proposal, provided that directors will be permitted to alter the last day of the financial year by any number of days up to and including seven days (i.e. it need not be exactly "plus or minus seven days"), for example, to enable them to end their financial year on a Friday each year.*
Respondent A	*(a)Yes, we agree with the proposal.* *(i) Yes, we agree the first accounting reference period should not be more than 18 months. However, we do not agree to restricting the first accounting reference period to more than six months as this would impose unnecessary inflexibility should a shorter period genuinely be required (e.g. a company incorporated in December may want to have a 31 March year end to coincide with its parent company year end).* *(ii)~(v) Yes, we agree with the proposal.* *(b) Yes, we agree with the proposal.* *(i) Yes, we agree with the proposal.* *(ii) We agree with the principle of not allowing regular alteration to the reference date. However we believe setting a minimum period of five years for the next allowable extension of the accounting reference date may be arbitrary. We understand the rule is for anti-abuse purposes and recommend that a requirement for the directors' to state the appropriate reason for an extension in the directors' report may achieve the same objective, without being unduly restrictive for valid business reasons.* *(iii) Yes, we agree with the proposal.* *(c) Yes, we agree with the proposal.*
ACCA	*(a) We have no particular comment in this regard, but consider the current practice adequate. The requirement for the first Annual General Meeting to be held within 18 months of incorporation implies that the first set of the company's account will not cover a period longer than 18 months since its corporation. This practice, although not a specific provision of the company law, is generally well understood and accepted. In contrast, the proposal suggested in the consultation document reads too complicated and creates confusion amongst the readers and we do not consider this consistent with the primary objective of the rewriting the CO.*
The Law Society of Hong	*(a) Agree. The current indirect way of making such requirement in the CO is not satisfactory and should be addressed by an amendment.*

Kong	*(i)* **not less than six months?** *A policy objective for requiring the minimum length of 6 months is not apparent. If no cogent reason exists for fixing the minimum period, then the matter can be left to the directors.* **not more than 18 months?** *Agree. This period is in line with the existing requirement to convene the first AGM within 18 months.* *(ii) Agree but there is a consequential issue: Assuming the accounting reference dates have been fixed by statute because the directors have failed to fix those dates by appropriate resolution at the relevant time, whether the directors are permitted to override those statutory fixed dates by subsequent resolutions.* *(iii)~(v) Agree.* *(b) Agree.* *(i) Agree.* *(ii) Cannot see any valid reason for the 5-year restriction if the change has been approved by shareholders.* *(iii) Agree.* *(c) Agree.*
Deloitte Touche Tohmatsu	*We agree with all the proposals contained in Question 2 except as follows.* *(a)(i) In 3.7 it is noted that the first AGM has to be held within 18 months of incorporation and the accounts are required to be laid before the company at its AGM. How then can it be proposed for newly incorporated companies that the first accounting reference period should be not more than 18 months from the date of incorporation? In other words, if the directors elected for a first accounting reference period of 18 months, the company would be unable to meet the requirement to lay accounts at the first AGM to be held within 18 months of incorporation. On this basis we suggest that the proposal for newly incorporated companies should be that the first accounting reference period should be not more than 15 months from the date of incorporation.* *(c) Instead of providing the flexibility to the directors to alter the last day of the financial year by plus or minus seven days, we would suggest that the election be framed in terms of fixing the accounting reference period (i) on annual basis; or (ii) for a 52 week period. Fixing the accounting reference period enhances comparability across periods and precludes potential manipulation of accounting information, especially in instances where there are material transactions immediately before or after the financial year, e.g. acquisition or disposal of a material subsidiary on 30 December.*
The Institute of Accountants in Management	*(a) Yes, and (i) to (iv) all Yes* *(b) Yes, and (i) to (iii) all Yes* *(c) Yes*

Canadian Certified General Accountants Association of Hong Kong	*(a)& (b) No, other than confusing the general public and accountants, CGA cannot see any merits of adopting the term "Accounting Reference Period/Date" which is not universally used in the accounting profession except that the term was created in Europe and has been incorporated into the Companies Act of the United Kingdom. It simply creates a new term and makes the CO more complicated.* *(c) No, the existing requirement is sufficient and flexible.*
The Hong Kong Institute of Chartered Secretaries	*We support the proposals mentioned in Question 2 with two exceptions. Regarding the proposed filing of the director's resolution approving the alteration of the accounting reference date, we consider it more appropriate for a prescribed form to be filed. As to the proposal that directors may alter the last day of the financial year by plus or minus seven days, we do not find it necessary. Further, it will likely cause confusion to users of the financial statements and create difficulty in the year on year comparison of the statements.*
CLP	*(a) & (b) We have no objection to the proposals mentioned in questions 2(a) and (b).* *(c) We agree to the proposal that the Companies Ordinance should be amended to require each company to have a fixed financial year. However, we question the need for the provision of a certain degree of flexibility in fixing the financial year by allowing the company's directors to alter the last day of the financial year by plus or minus seven days. Such flexibility would create difficulties in the year-on-year comparisons of the financial statements and might cause confusion to the shareholders and other users of the financial statements.*
The Association of International Accountants	*No. There are no obvious advantages in specifying the AFD, AFP and FY, but in so doing companies would be deprived of freedom of choice in this aspect.*
Hong Kong Institute of Certified Public Accountants	*(a) We agree with the proposal, as there is currently no provision to regulate the first accounting period except that the first AGM has to be held within 18 months of incorporation, and accounts are required to be laid before the company at its AGM.* *(i) We agree with having a maximum period of 18 months for the first accounting period. However, we do not support the proposal to mandate a minimum initial period of not less than six months. We do not see the need for this requirement and consider it unnecessarily restrictive.* *For example, if a company was incorporated in September 2007 and wished to adopt a December year end, we do not see the need to prohibit that company from preparing financial statements for the three month period ended 31 December 2007. If the company chooses to prepare such financial statements this would enable the entity to prepare its 2008 financial statements on a calendar year basis, with comparative amounts covering the initial three month period, rather than covering an initial 15 month period with no comparatives. In our view, such financial statements would be more informative for the reader and should not be prohibited.* *(ii) We agree.*

	(iii)~(v) We agree, subject to our comments below concerning ability to change the accounting reference date. *(b) We agree that each company should be allowed to alter its accounting reference date through a directors' resolution.* *(i) We agree with this restriction.* *(ii) We do not agree with this restriction. We do not see the need to restrict the alteration to being only every five years, on the basis that in our experience companies will only change their accounting reference date for sound operational reasons and not arbitrarily.* *In our experience such reasons are not restricted to a subsidiary aligning with its holding company. For example, if a Hong Kong incorporated holding company acquired significant subsidiaries in a jurisdiction where the accounting reference date was determined by statute, the holding company may decide to amend its own reporting date to align with that of its subsidiaries, as it is not legally able to amend the subsidiaries' reporting date. Other reasons may include a shift in the seasonality of its operations (for example, as a result of expansion into the Southern hemisphere), which result in a change in the most efficient reporting date for cut-off purposes.* *We consider that it would be a sufficient safeguard to require the directors' resolution and directors' report to state the reason for the change in reporting date, with the added proviso (as proposed) that the resulting accounting period is no longer than 18 months.* *(iii) We agree.* *(c) We agree with this proposal, provided that directors will be permitted to alter the last day of the financial year by any number of days up to and including seven days (i.e. it need not be exactly "plus or minus seven days"), for example, to enable them to end their financial year on a Friday each year.*
Ernest & Young	*(a)(i)to(iii) We agree with the proposed changes, except that for 2(a)(i) we believe that restricting the first accounting period to being not less than six months is unnecessarily inflexible.* *(a)(iv)to(v) We agree with the proposed changes.* *(b) We agree with the proposed changes, except that for 2(b)(ii) we believe that restricting such change to a 5 year period since the last extension is unnecessarily inflexible.* *(c) We agree with the proposed change.*
HKEx	*(a) I agree that each company should have a fixed accounting period and each successive accounting period after its first accounting period should be 12 months each.* *I also agree that it is reasonable that the first accounting period should be no less than 6 months or more than 18 months from the date of its incorporation.* *I would however prefer that the shareholders, upon the recommendation of the directors, agree to an appropriate year end*

	date rather than one being imposed automatically as suggested in Question 2(a)(ii). Adopting the automatic mechanism may not be very meaningful or useful and the accounting period end would most likely require a change subsequently. *(b) I do not agree that the directors should be allowed to alter a company's accounting reference data only through a directors' resolution without approval and agreement by the shareholders. Filing a copy, by public companies, of the directors' resolution of a change in the accounting reference date with the Registrar of Companies would not be adequate. I believe that the directors act in a stewardship role for the shareholders and a proposal to change the accounting reference date, together with reasons should be communicated to and agreed by the shareholders. Once a reporting timetable has been set, shareholders have an expectation of the timing when future financial statements will be made available to them.* *The five year restriction on altering the accounting reference period appears somewhat arbitrary and if it is to be adopted the rationale should be clear from reading the relevant law.* *(c) I support the proposal that all companies should have a fixed financial year. However, I do not support the proposal which enables the directors to alter the last day of any financial year by plus or minus seven days. This would make accounting periods non comparable and may in fact facilitate the ability of the directors to windowdress the results and financial position of the company.*
The Chamber of Hong Kong Listed Companies	*(b)(ii) We agree companies should be allowed to alter their accounting reference dates through a director's resolution, and we do not feel it is necessary to have the 5-year rule. This is to allow more flexibility to the companies to align its accounting and business cycles as long as the shareholders are adequately informed of such change.*
CPA Australia	*(a) to (c) The proposal is supported as presented (including all sub-sections) as it provides assurance to shareholders (and investors) that financial reports are presented in a timely and efficient manner. This is especially important for newly incorporated companies which in their first year of operations are very vulnerable to failure.*
The Society of Chinese Accountants & Auditors	*(a) We agree with this proposal. Apart from the requirement for accounts to be laid before the Company at AGM, the first of which should be held within 18 months from the date of incorporation, there is currently no specific requirements for fixing of the accounting reference period.* *For newly incorporated company* *(i) As the CO has already required accounts to be laid before AGM within 18 months from its incorporation, it is reasonable for the maximum period to be covered by the first set of accounts to be for such period. However, imposing a minimum period for the first set of accounts may not be realistic as some of the companies, especially group companies may need to have uniform accounting date.* *(ii) We agree with the proposal.* *(iii) We support this proposal provided that the directors may through resolution has the ability to change the accounting*

	reference date. *For any other company* *(iv)~(v) We agree with the proposal provided that the directors may through resolution has the ability to change the accounting reference date.* *(b) We agree with the suggestion that every company should be allowed by directors' resolution to alter its accounting date.* *(i) We agree that the accounting reference period should not be extended to more than 18 months.* *(ii) We have reservation on this suggestion. Company changes its accounting date normally with practical reasons. It would be sufficient for the directors to state clearly in its financial statements and board resolutions the reasons for such change of accounting date.* *(iii) For good corporate governance, we agree that for public company, the resolution should be filed with the Registrar of Companies for public information.* *(c) We agree with the proposal.*
Association of Women Accountants (Hong Kong) Limited	*Companies in Hong Kong do not encounter significant problems when following the existing regime in this respect. Companies generally would decide a financial year end date since its incorporation and follows for the ensuing years. Therefore, it is suggested that the provisions in this respect should be kept simple and the new requirement of "each company to have a fixed accounting reference period" may not be necessary.*
Hong Kong Bar Association	*(a) The Bar agrees with the proposals set out in paragraph 3.8 of the Consultation Paper. We note that the proposals adopt wholesale the UK approach save in the case of s.225(4)(b) of the Companies Act 1985 (exceptions to the prohibition against a second extension of the accounting reference period within 5 years in relation to administration orders and the Secretary of State). Whilst we agree that the exception in relation to administration orders should be discarded as that regime has no application in Hong Kong, there may be merit in retaining the exception in relation to the Secretary of State to allow for a greater degree of flexibility.*
The Chartered Institute of Management Accountants	*(a) to (c) Yes*

Question 3 **(a) Should a holding company be relieved from the obligation to prepare its own accounts, provided that it has prepared group accounts and has included its own balance sheet as a note to its group accounts?** **(b) Do you agree that the conditions under which a subsidiary is not required to prepare group accounts should be refined as proposed in paragraph 3.13?**	
The British Chamber of Commerce	*(a) & (b) Agreed*
Robert Kenrick	*(a) & (b) Yes*
Arthur Lam, Arthur Lam & Co. CPA	***Regarding (a) above**, we agree that the relief of preparing its own accounts subject to note disclosure is a good recommendation.* *We shall note that some company do so little to its own accounts. It may only be a company to pay day-to-day expenses of its dormant subsidiary companies and/or pays rents for the head office. Those companies may not even have fixed assets at all. The current practice to make the cross references of own accounts and group accounts in many occasions cause the financial statements more difficult to read than it ought to be.* ***Regarding (b) above**, we agree to the proposal. But we suggest to state more clear that "3.13(b) it is a partially-owned subsidiary of another entity and has the consent of its **all** other members for not presenting the group accounts.*
Paul Mok	*(a) & (b) Yes*
Victor Ho	*(a) Yes. On the other hand, it is advised that a holding company may be eligible to be relieved from the obligation to prepare its own accounts, from the group accounts, based on certain criteria on the pre-determined level of turnover, net asset value of the holding accompany, to be set out in the new Companies Ordinance.* *(b) No comment*
KPMG	*(a) We agree with this proposal and presume that consequential amendments would be made to relieve the auditors from the obligation to report specifically on this balance sheet.* *(b) We agree with the conditions as are set out in paragraph 3.13, except that we consider that it is unduly burdensome for a non-wholly owned holding company to be required to obtain the consent of all its shareholders. In our view, it would be sufficient to make the condition that "the other members have been informed about and do not object to the parent not presenting consolidated financial statements" i.e. to mirror the wording in paragraph 10(a) of Hong Kong Accounting Standard 27 "Consolidated and separate financial statements".* *If there are concerns that this concession may be abused, we would support introducing de-minimus limits, for example stipulating that the company need not prepare consolidated financial statements if it has obtained the consent of the*

	shareholders holding at least 75% in nominal value of the shares, provided those holding the remaining 25% have been informed about and do not object to the parent not presenting consolidated financial statements, following a similar approach as is proposed in paragraph 7.6(c). Furthermore, this concession could be restricted to private companies.
Respondent A	*(a) Yes, we agree with the proposal. However, we suggest that if there is specific information that is of relevance to the stakeholders which is not included in the note on the holding company balance sheet that this be disclosed in addition.* *(b) Yes, we agree with the proposed conditions underlined in paragraph 3.13, except we recommend that paragraph 3.13(b) be amended to align back with the lower threshold of HKAS No. 27. The current proposed higher threshold will negate the exemptions to prepare group accounts given under HKAS No.27.*
ACCA	*(a) We understand the concern of an auditor that it is practically difficult to opine on the truth and fairness of the presentation of a company's accounts where only the balance sheet is shown without the profit and loss accounts. We therefore agree to the proposal to include the company's own balance sheet as a note to its group accounts.* *However, we would like to highlight that should the company's own balance sheet be included as a note, it will not be subject to the requirements stipulated in the Tenth Schedule of the CO. In considering the disclosure requirement for the detailed breakdown of the company's own balance sheet, we recommend that disclosure of the distributive reserve of the company should be a minimal requirement. This helps users of the company's financial statements, in particular creditors, to obtain a better picture of the financial soundness of the company on an individual basis.* *(b) We support the proposal which aims at closely aligning the requirements in the CO with that of the Hong Kong Financial Reporting Standards ("HKFRSs") such that it will become clearer for the parent undertaking as to the circumstances where consolidated financial statements are required. We propose the Working Group to further consider the wordings of the paragraph 3.13 regarding the circumstances under which a holding company is not required to prepare group accounts.* *Under Hong Kong Accounting Standard (HKAS) 27 Consolidated and Separate Financial Statements, where a company is a partially-owned subsidiary of another entity and its other owners, including those not otherwise entitled to vote, the requirement is only that these owners "have been informed about, and do not object to", the parent not presenting consolidated financial statements. However, under paragraph 3.13, where a company is a partially-owned subsidiary of another entity, it has to have "the consent of its other members". It appears from the literal meaning that whilst negative confirmation serves the purpose under HKAS 27, positive confirmation has to be obtained from the "other members" under the proposal.* *As the recommendation originates from HKAS 27, we recommend the Working Group to revise the wordings of the sub-paragraph in order to minimise any discrepancies between the legislation and the accounting standard and to avoid any unnecessary confusion.*
The Law Society of Hong	*(a) A holding company that has other operations apart from investment in subsidiaries and associated companies should still be required to prepare its own accounts.*

Kong	*(b) Agree.*
Deloitte Touche Tohmatsu	*(a) We agree with the proposal.* *(b) We agree that the conditions under which a subsidiary is not required to prepare group accounts should be refined as proposed in paragraph 3.13. We note that it is the intention of the Working Group to provide a "higher threshold" for a partially owned subsidiary to be exempted under 3.13 relative to the requirement under Hong Kong Accounting Standard (HKAS) 27 (i.e. "consent of its other members" under 3.13 vs "do not object" under HKAS 27). However, on a collective basis, the exemptions under 3.13 provide a "lower threshold" than those provided in HKAS 27. Therefore, many reporting entities which meet the exemption under 3.13 may still be required to prepare group accounts under HKAS 27. Some of the instances are:* *- if the ultimate or any intermediate parent of the reporting entity does not produce consolidated financial statements available for public use that comply with International Financial Reporting Standards (IFRSs) or Hong Kong Financial Reporting Standards (HKFRSs); or* *- if the reporting entity's debt or equity instruments are traded in a public market.*
The Institute of Accountants in Management	*(a) & (b) Yes*
Canadian Certified General Accountants Association of Hong Kong	*(a) & (b) Yes*
The Hong Kong Institute of Chartered Secretaries	*(a) We agree that a holding company should be relieved from the obligation to prepare its own accounts, provided that it has prepared group accounts and has included its own balance sheet as a note to its group accounts. This proposal will save costs.* *(b) We have no objection to this proposal.*
CLP	*(a) & (b) We have no objection to the proposals set out in paragraphs 3.12 and 3.13 of the Consultation Paper.*
The Association of International Accountants	*(a) Yes, provided that the group accounts are prepared in accordance with HKFRS. (Note: The definition of group accounts should be clearly given in the provisions.)* *(b) No, unless the holding company has no other stakeholders than the controlling shareholder. It is now recognized in corporate governance that the stakeholders of a company are more than the shareholders. For example. Section 129G refers to*

	debenture holders. The stakeholders in the holding company other than the controlling shareholder have vested interests in the group accounts of the holding company more than the group accounts of the ultimate holding company.
Hong Kong Institute of Certified Public Accountants	*(a) Although we are aware that many jurisdictions do not require the preparation of "parent" accounts, we are also aware of concerns that full parent account are necessary in Hong Kong. We recommend that the Companies Ordinance include a provision for shareholders of the "parent" to be able to require full "parent" accounts.* *(b) We agree with the conditions as are set out in paragraph 3.13, except that we consider that it is unduly burdensome for a non-wholly owned holding company to be required to obtain the consent of all its shareholders. In our view, it would be sufficient to make the condition that "the other members have been informed about and do not object to the parent not presenting consolidated financial statements" i.e. to mirror the wording in paragraph 10(a) of Hong Kong Accounting Standard 27 Consolidated and Separate Financial Statements.* *If there are concerns that this concession may be abused, we would support introducing de-minimus limits, for example stipulating that the company need not prepare consolidated financial statements if it has obtained the consent of the shareholders holding at least 75% in nominal value of the shares agree, provided those holding the remaining 25% have been informed about and do not object to the parent not presenting consolidated financial statements, following a similar approach as is proposed in paragraph 7.6(c). Furthermore, this concession could be restricted to private companies.*
Ernest & Young	*(a) In principle we agree with the proposed change. However consideration should be given to whether the presentation of the company balance sheet as a note to the financial statements rather than as a separate statement as currently presented (together with supporting notes), will give the same level of detail of information about the company balance sheet which users currently obtain and thereby meet the users' requirements.* *(b) We agree with the proposed changes.*
HKEx	*I understand that the key rationale for the proposal is based on the current accounting standards which allow it.* *I believe accounting standards on group accounts deal with concepts of what an "economic entity" is and how it should be accounted for whereas the Companies Ordinance should primarily deal with concepts of what is a "legal entity" and what its own financial disclosure requirements should be. The Companies Ordinance nevertheless should require additional disclosure of "economic entities" too but this would be information from a different perspective. The two are not synonymous.* *Where the carrying amount of net assets at the company level is significantly less than that shown at the group level, it is possible that interests in subsidiaries at the company level have not been properly assessed for impairment. This would have implications on whether the reported results of the company shown in its income statement are fairly stated and will also have an implication on the company's distributable reserves.* *I would add that currently in Hong Kong it is possible to prepare group accounts under merger accounting where there is "common control". This is allowed for under Accounting Guideline 5 "Merger Accounting for Common Control Combinations" ("AG 5"). Theoretically, it is possible for a controlling shareholder to adopt merger accounting at any time it is advantageous to do so. For*

	example, a controlling shareholder could use merger accounting in 2007 to include certain selected businesses. In 2008 or at any time in the future, merger accounting could be used again to combine and include in group accounts previously excluded companies or businesses as if they were part of the group at an earlier date as the common ownership and control criteria of AG 5 would be met. This is undesirable and confusing to both preparers and investors alike and we have written to the Hong Kong Institute of Certified Public Accountants to reconsider this issue. *I note that the UK Companies Act 2006 has retained the need to prepare the financial statements of the company itself when a company has subsidiaries and presumably there were reasons for this. I would suggest that enquiries be made to determine the considerations taken into account which caused them to take their position as the same considerations may also be applicable in Hong Kong.* *I would stress that it is a pre-requisite to ensure that the company's own books and records and its own financial statements are complete and in order before it is possible for it to properly prepare a proper set of group accounts. For example, if a company has not properly recorded and accounted for all its subsidiaries, it would not be in a position to prepare a proper set of group financial statements. I would also note that to be regarded as a subsidiary it is now theoretically possible to have control of a company without any equity holding in the company and an investment cost in a subsidiary may not appear in the financial statements of the individual company.* *It is also unclear from the consultation paper what the requirements would be if in one year the company has subsidiaries and therefore would present group accounts and in another year it has not. How would comparatives be dealt with and how would shareholders be able to reconcile the financial statements of the two consecutive years.* *Although the consultation paper is silent on the matter I presume that it is proposed that in future auditors will not be required to opine on the results and financial position of the company itself. The working group may wish to reconsider this after clarifying why the UK decided to require a company to present financial statements of the company itself and also to prepare separate financial statements of the group where it has subsidiaries.* *An issue not addressed in the consultation paper that should be dealt with is what would be the legally distributable reserves of the company, how it should be determined and whether the quantum of distributable reserves of the company and/or group should be disclosed in its financial statements.* *I agree with the proposal concerning exemption from preparing group accounts as set out in paragraph 3.13.*
CPA Australia	*The proposal is supported as presented.*

The Society of Chinese Accountants & Auditors	*(a) We support this proposal. Since in substance, the company has provided such information if it has prepared group accounts and has included its own balance sheet as a note to its group accounts. Besides, such requirements are not found in HKFRSs or IFRSs.* *(b) We support this proposal, but subject to further alignment with IAS 27 and HKAS 27 <u>Consolidated and Separate Financial Statements</u>.* *We support that the conditions under which a subsidiary is not required to prepare group accounts should be refined while it is better to fully align with IAS 27 and HKAS 27. The conditions proposed in paragraph 3.13 requires "the consent of its other members" to exempt a partially-owned subsidiary of another entity to present the group accounts. However. IAS 27 and HKAS 27 paragraph 10(a) only requires that these other members "have been informed about, and do not object to" the exemption in order get the exemption.*
Hong Kong Bar Association	*(a) The Bar supports the proposal.* *Under the existing law, an ultimate holding company:-* *(1) is under a duty to lay both its own accounts (s.122(1)) and group accounts (s.124(1)) before its general meeting;* *(2) the group accounts should be in the form of consolidated accounts including a consolidated balance sheet and a consolidated profit and loss account dealing with the state of affairs and profit or loss of the company and all the subsidiaries (s.125(1)), and must give a true and fair view of the same and comply with the requirements of the Tenth Schedule or provide the same or equivalent information (s.126(1)&(3));* *(3) if consolidated accounts are prepared, the need for the holding company's own accounts to comply with the "true and fair view" and Tenth Schedule requirements is dispensed with (s.123(5)), although the company's own accounts would still have to include the particulars of its subsidiaries and associated companies stipulated in ss.128 and 129; and* *(4) the group accounts can be wholly or in part incorporated in the company's own balance sheet and profit and loss account (s.125);* *As far an intermediate holding company (which, in turn, is wholly owned by an ultimate holding company), it only needs to prepare and lay its own accounts before its general meeting (s.122(1)), which have to comply with the "true and fair view", Tenth Schedule and ss.128 & 129 requirements, but is exempted from the need to prepare group accounts (s.124(2)).* *The same applies to a subsidiary (which is a wholly owned subsidiary of an intermediate holding company). In other words, the holding company will have to prepare 2 sets of accounts, its own (though it could be a watered-down version) and the group accounts, and the intermediate holding company and the subsidiary will have to prepare their respective accounts.* *It is clear from the above that where the ultimate holding company has prepared group accounts, it is relieved from the obligation to prepare its own accounts in compliance with the "true and fair view" and the Tenth Schedule requirements such that (1) they may not be of much value to the members, and (2) extra costs have to be incurred to prepare the same. The Bar*

	therefore agrees that there is a compelling case for relieving the ultimate holding company from the obligation to prepare its own accounts. *However we also recognize the ultimate holding company's balance sheet contains meaningful information about its affairs and financial status which may not be patent from the group accounts, see the discussion on limitations of consolidated accounts in Re Thorn EMI Ltd [1989] BCLC612 at 615h - 616a, 617f-h, per Harman J. For this reason, the Bar agrees that the ultimate holding company's balance sheet should be disclosed, and we consider that its inclusion as a note to the group accounts suffices for this purpose.* *(b) The Bar supports this proposal.* *As stated above, the existing law only exempts the intermediate holding company from preparing group accounts if it is a wholly owned subsidiary (s.124(2)(a)). Thus if the ultimate holding company controls only a majority interest in the intermediate holding company and notwithstanding its affairs and financial status have been sufficiently disclosed in the group accounts prepared by the ultimate holding company, the intermediate holding company will still be put to the expense of preparing group accounts for itself and the subsidiary, which is likely to be a duplication of the ultimate holding company's group account. As such we believe it is advisable to include the additional exemption as set out in paragraph 3.13(b) of the Consultation Paper.* *We note that in §3.13(b) reference is made to "consent of its other members". It is not clear whether it is proposed that to come within the exemption, the consent of all the members is required. If that is the intention, it is a stricter requirement than the equivalent UK provision. Under s.228(1)(b) of the Companies Act 1985, an intermediate holding company is exempted from preparing group accounts where (1) the ultimate holding company holds more than 50% of its shares, and (2) no request for group accounts is made by shareholders holding either more than 50% of the remaining shares or 5% of the total shares. We consider that, consistent with the cardinal rule by which a company operates, viz., that the view of the majority prevails, the threshold for members' consent should be lowered to those prescribed under s.228(1)(b) of the Companies Act 1985.*
The Chartered Institute of Management Accountants	*(a) to (b) Yes*

Question 4 **Should companies (unless otherwise exempted as proposed in paragraphs 4.6, 7.9 and 7.11) be required to prepare a more analytical and forward-looking business review along the lines of paragraph 4.3?**	
The British Chamber of Commerce	*A Business review will be an advance from what is currently required. We would definitely like to see it include environmental sustainability issues and personnel issues, as well as other matters relating to the public interest.*
Robert Kenrick	*No. At a minimum the exemption should be extended to all private companies (see covering letter.)* <u>*From covering letter:*</u> *"There has recently been considerable press comment that financial statements as presently constituted are historical documents and do not give investors (and journalists) the information that they want in relation to a company's future. I suspect that such people are doomed to be disappointed, no matter what provisions are added to the Companies Ordinance. No director is going to issue a profit forecast except in the limited circumstances of an IPO.* *I do think it important that investors understand the business in which they are investing but I am concerned as an investor at the volume of information that is now directed at investors in the UK and Australia, not to mention the US. A lot of this "information" is little short of public relations puff, or repeats information that can be found in the financial statements. The volume has also been increased unnecessarily by every regulator issuing their own requirements independently of each other. Thus in Fubon's case the 2006 accounts deal with risks facing the business on pages 180-184 (required by the HKMA), on pages 146-164 (required by the HKICPA's accounting standards), on pages 70-71 (required by the SEHK listing rules in the Corporate Governance Report) and on pages 50-51 (required by the SEHK listing rules in the Business and Operations Review). Do investors really need further information on business risks included in the directors' report?* *For listed companies, the listing rules already require the information discussed in paragraph 4.3 of the proposals; for other companies (and particularly private companies) one must assume that shareholders would already be aware of this information before buying shares. The issue of regulatory arbitrage should also be considered – for most businesses the obvious response to overbearing reporting requirements is to reincorporate in the BVI. I therefore urge the working group to keep the directors' report for unlisted companies as simple as possible and leave listed company disclosure to the SEHK."*
Arthur Lam, Arthur Lam & Co. CPA	*We do not agree that there shall be a more complicated reporting requirements for all companies, including those companies not being a private company but is not a listed company.* *The existing directors' report disclosure have already been environmentally harmful. We have encountered more than a hundred private companies to have those directors' report occupying for more than one page simply because the Section 129D required that disclosure for directors' interest, management contracts, and arrangement to acquire shares and debentures. Those wordings are required even if the companies are closely held and the shareholders and the directors are the same group of persons. It is true even there are no "<u>interests, management contracts, and arrangement to acquire shares and debentures</u>". We support that those*

	disclosures if exist shall be reported. Repeating "we have no this" and "we have no that" again and again have cause many trees be cut down for nobody's benefits. We opt for a simpler reporting under the Companies Ordinance. For the listing companies, the listing rules shall be the source to provide the guidance for more in-depth illustration.
Paul Mok	*NO. I object to requiring companies to prepare the recommended business review for the following reasons:* 1. *I have no problem with the "enlightened shareholder value" approach, which recognizes that boards of directors need to take account of the impact on the company of non-financial, social, and environmental and ethical issues. However, I have concerns that codification may lead to a compliance-driven approach to the exercise of directors' duties rather than one based on the making of good-faith judgements.* 2. *The recommendation, which may open the floodgates to lawsuits, will lead directors to take expensive and time-consuming legal advice, impair efficient decision making and introduce an unnecessary layer of bureaucracy.* 3. *The absence of a "safe harbour" provision to protect directors who give the required information in good faith will result in directors opting to give boiler-plate disclosures in place of meaningful discussion.* 4. *It may be argued that for good corporate governance reasons, quoted companies may have to provide more information as required in the recommended business review. In that case, I would recommend that the issue be dealt with within the ambit on the Listing Rules instead of the Companies Ordinance. Even so, this extra reporting is better given when needed, rather than imposing on all listed companies a need to comply with a long list of required disclosures. In the sophisticated and efficient (almost) financial market of Hong Kong, companies will be driven to give more information by market forces, not necessarily by regulations.* *Market forces will ensure the companies will follow good corporate governance practices, since such practices will become a competitive advantage for the companies. In other words, failing to adopt good corporate governance practices will carry a cost to be borne by the company in question, in the form of, say, depressed share prices or a lackluster credit rating.*
Victor Ho	*Yes. It is suggested that apart from the provisions of Appendix 16 to the Main Board Listing Rules are to be complied with, Appendix 14 on the Code of Corporate Governance carries the same weighing should also be taken into account.*
KPMG	*We consider that this information is only of relevance in the case of companies which have raised funds publicly. We therefore consider that this requirement is more appropriately dealt with through the Listing Rules. We do not see the need for a private company to include such information in its directors' report, particularly as its financial statements are not placed on public record.*
Respondent A	*Yes, we agree in principle with the proposal. However, it is unclear as to the level of detail required to be disclosed and therefore it may be difficult for private companies which are not exempted under 4.6, 7.9 or 7.11 to comply and may cause delays in the preparation of their financial statements. For companies which are owner operated or wholly-owned, the business review may be considered irrelevant. We would also recommend that prospective financial information be excluded from the scope of any*

	analytical or forward looking review.
The Law Society of Hong Kong	*No. It is unreasonable to require directors to make forward looking statements. This places a considerable burden on the directors, and these statements may be too bland to have any informative value to shareholders. It is suggested that inclusion of material factual developments post balance sheet date would be more appropriate.*
Deloitte Touche Tohmatsu	*We support the move to bring more rigour to the analysis of the development, performance and position of the company performed by the directors in the directors' report. However, we believe that it may not be desirable or possible to set out comprehensive measures in legislation that would be applicable to all companies. Without specific requirements, compliance with such a provision would be a subjective matter with wide variations from company to company.* *We have concerns about the ability of the directors to provide reliable "forward looking" information in the directors' report. For one thing, it would be difficult for directors to provide any meaningful forward looking information in the light of their obligations under the Companies Ordinance and the Hong Kong Stock Exchange's Listing Rules governing projections and profit forecasts. Directors who make such statements are exposed in the event that actual events turn out to be different from forecast. As a result, we believe it is likely that in order to protect themselves, directors would only include very generic language with little detail and with disclaimers rendering the disclosures not useful to readers. We would also note that there has been significant controversy in other jurisdictions where it has been attempted to mandate such a requirement through legislation.* *We recommend that a comprehensive review of any developments in the business since the balance sheet date should be provided. Such a factual analysis would avoid the pitfalls of a forward looking review, as noted above. This post-balance sheet review would be over and above the existing requirements of HKFRS, which are focused on the effect of post-balance sheet events on amounts recorded in the financial statements. We recommend this review to include any significant decisions made, or events affecting the business, after the balance sheet date.*
The Institute of Accountants in Management	*Yes, but with great reservation on 4.3(b) in that unless the ordinance can define comprehensively what amounts to risks and uncertainties that need to be disclosed, the business community would find it difficult to comply with this requirement. On this, we believe the authority needs to strike a good balance between business and compliance.*
Canadian Certified General Accountants Association of Hong Kong	*Yes, but it must be restricted to listed companies or public interest companies. Some of the issues have been dealt with in the General Acceptable Accounting Standards.*
The Hong Kong Institute of Chartered	*We agree that all companies (except those exempted) should prepare a more analytical and forward-looking business review along the lines of paragraph 4.3. Such business review can further the shareholders' and analysts' understanding of the business, prospects, risks and performance of the companies. This is also the international practice which has been adopted in many major*

Secretaries	*markets such as the UK and Australia. In particular, the requirement to disclose information relating to environmental and employee matters where they have significant impact on the company is in line with the international trend and is also reasonable in view of the increasing demand from the public, shareholders and different stakeholders for companies to be socially responsible. Further, the business case for being a good corporate citizen has been substantiated by plenty of research findings which support the proposition that a socially responsible corporation can enhance its staff morale, reputation, credibility and consequentially its shareholders value.* *For the avoidance of doubt, the provision relating to the exemption should be worded to the effect that the exempted companies may publish simplified directors' reports rather than be required to do so.*
The Association of International Accountants	*Yes and no. Yes - to the extent that the business review should be more analytical; and no - as far as more forward-looking business review is concerned, this will inevitably necessitate estimation and subjectivity, and thus subject to uncertainty.*
Hong Kong Institute of Certified Public Accountants	*We consider that this information is generally only of relevance in the case of companies which have raised funds publicly. We consider that the information may not be of interest for shareholders of small private companies and welcome the proposed exemption for "section 141D companies".* *We note that jurisdictions requiring such disclosures generally provide some form of "safe harbour" to support directors in making appropriate disclosures. We recommend that consideration be given to introducing such support in Hong Kong.*
Ernest & Young	*We disagree with the proposed changes. We see little benefit for the vast majority of private companies in including such information. This is particularly so in Hong Kong given that there is no public filing requirement for private company financial statements. Also, in our view, because the needs of the users of private company financial statements will often be different to those of listed entities, we feel that there is a risk that the quality of the disclosures may become standardized and not reflect the spirit intended for such disclosures. Furthermore, whilst there is a wider public interest in providing such information for listed companies - we would suggest that such requirements for listed entities be matters for the Listing Rules rather than the Companies Ordinance.*
HKEx	*I agree that the new rules on "business reviews" along the lines suggested would be useful and also agree that exemptions should be allowed for certain private companies especially where its owners and management are substantially the same persons.*
CPA Australia	*The proposal is supported as presented.* *It is increasingly important that company directors are aware of the many factors that impact their businesses in both the short and medium terms. In addition it is also well accepted that:* • *The pace of change within the business community is increasing* • *Technological changes can rapidly impact the profitable operation of a business* • *Companies must be well prepared with disaster recovery plans for not only natural disasters (SARS, earthquakes etc.) but also*

	deliberate attempts to disrupt the flow of business (9-11, cyber-terrorism etc.) • *The community in general and governments are now very focused on the social contract between companies and stakeholders (Corporate Social Responsibility)* *All these factors mean that directors must be both forward looking whilst ensuring that both current shareholders and future investors can be assured that the directors are not only considering but formulating strategies to deal with the highly competitive business environment as well as the social environment within which companies now operate.*
The Society of Chinese Accountants & Auditors	*We support this proposal, subject to the contents and scope of the coverage. It is reasonable and useful for listed companies or those companies with public interest to prepare such review. However, the cost and benefits to the other companies may not justify this.*
Association of Women Accountants (Hong Kong) Limited	*Bearing in mind that irrespective of the size of a company, most private companies in Hong Kong are owner managed. Unlike listed companies which need to observe public accountability, private companies preparing a more analytical and forward-looking business review would anticipate to be impractical, or may be of no real value to members of these companies when compared to the additional compliance and business costs incurred.*
The Chartered Institute of Management Accountants	*Not necessary, as it is already stated in the chairman's statement*

Question 5 **Do you have any suggestions on the information that should be included in the financial and non-financial key performance indicators, a generic term which is intended to refer to factors by reference to which a company's business can be measured effectively?**	
The British Chamber of Commerce	*We would like to see carbon policies/data and other emissions data included*
Robert Kenrick	*The Companies Ordinance should avoid being prescriptive in this area. The Key Performance Indicators (KPI's) vary from company to company and industry to industry. For instance, KPI's for a bank might be Net Interest Income, Spread and fee/income ratio. For a manufacturing company KPI's would include gross margin and R&D spend, whereas for an advertising agency the KPI's would be different again.*
Arthur Lam, Arthur Lam & Co. CPA	*If the cause of concern streams from the comparable listed companies, we again consider the matters shall be left to the listing rules to handle. Many private companies hire few staff. Many clubs or associations (which are not private companies) have the same situation. Additional disclosure are too troublesome to those companies and not-for-profit organizations. And please save the trees.*
Paul Mok	*Reference can be made to the guidelines contained in "Environmental Key Performance Indicators: Reporting Guidelines for UK Business" issued by the Department for Environment Food and Rural Affairs (Defra) in January 2006. However, I reiterate that I am against the idea of introducing a business review as part of the directors' report.*
Victor Ho	*Yes. Under the current generally accepted accounting principles, the whole set of financial statements of a listed company includes a consolidated income statement, a consolidated balance sheet, a consolidated cash flow statement, the holding company's balance sheet and notes to accounts.* *It is recommended that an <u>additional statement known as Variances Analysis on Income Statement and Balance Sheet items</u> should also be drawn up. Likewise, explanation on the major variances should be clearly given in note from.*
KPMG	*As noted in our answer to question 4, we do not support introducing such a requirement into the CO and consider that it is better dealt with in the Listing Rules, with additional guidance being issued by the relevant regulators such as the Stock Exchange, SFC or HKICPA, if thought necessary.* *So far as a non-listed company is concerned, in our view, a knowledgeable reader should be able to identify key financial information which reflects the business from the financial statements provided and there is no need for the directors' report to contain further financial information. With respect to non-financial information, in order for such information to be meaningful, it should be tailored from one business to another. We therefore do not think it is practicable or appropriate to further define the information that should be disclosed as a "non-financial key performance indicator" in the CO.*
Respondent A	*We suggest that consideration be given to international developments, possible sources of information include the IASB's*

	Discussion Paper on "Management Commentary" issued in October 2005 and the UK's Accounting Standards Board's Reporting Statement "The Operating and Financial Review" published in January 2007. *While we draw your attention to these papers we are not necessarily endorsing the views expressed in these documents.*
ACCA	*We support the proposed reporting requirements. Whilst there is no particular guideline under the current proposal regarding information relating to environmental and employee matters to be reported, we consider that the following information regarding the company's sustainability matters should be included such as* • *the company's principal environmental risks and opportunities;* • *any certifications achieved by the company for environmental-related performance or compliance;* • *the companies policies and practices relating to employment; labour/management relations, health and safety, training and education; equality of opportunity; human rights;* • *the company's principal risks and opportunities in social and employee matters;* • *the company's key strategies and procedures for implementing policies or achieving goals in these above areas.* *In addition, we recommend that a discussion by the company of the objectives of the business to generate or preserve value over the longer-term can also be included. The reporting company can address specifically the importance of planning for sustainable shareholder wealth.*
The Law Society of Hong Kong	*No.*
Deloitte Touche Tohmatsu	*As noted in our response to question 4, we do not believe it is possible for legislation to comprehensively set meaningful criteria against which all companies can be measured due to the wide variety of different industry and country measures that may be relevant.*
The Institute of Accountants in Management	*(a) Account receivables expressed as a % to revenue; (b)Change in total net tangible assets; (c) EBITDA per share.*
Canadian Certified General Accountants Association of Hong Kong	*Note of **"Value for money"** audit and the Non-Compliance risk.*

The Hong Kong Institute of Chartered Secretaries	*Key performance indicators ("KPI") are important in the sense that they provide the readers of the business review with a tool to measure the performance, whether financial or non-financial, of the company. In the UK, the Department for Environment, Food and Rural Affairs has published "Environmental Key Performance Indicators - Reporting Guidelines for UK Businesses" in 2006 setting out 22 environmental KPIs which help UK companies report on their environmental performance. It is our recommendation that guidelines on financial and non-financial KPIs should also be given to Hong Kong companies, without which, companies may adopt a different set of KPIs in reporting their performance. The adoption of the same KPIs can facilitate comparison of the performance of different companies in the same industry. This essentially helps the shareholders gauge the performance and strength of the companies in which they invest.*
The Association of International Accountants	*Key financial performance indicators should include operating margin %, assets turnover, ROA, ROI, ROCE, liquidity ratio, current ratio, equity-debt ratio, interest & fixed charges cover, principal debt covenant performance, etc.* *Non-financial performance indicators which would depend on the nature of the principal activities of the company include, e.g. head counts, sales per head, net profit per head, customer enquiry/complaint turnaround time.*
Hong Kong Institute of Certified Public Accountants	*For listed companies, we recommend that any requirements relating to specific key performance indicators be included in the Listing Rules. Such requirements would need to be very general as it is hard to identify indicators that are relevant to the circumstances of all listed companies.* *For non-listed companies, in our view a knowledgeable reader should be able to identify key financial information which reflects the business from the financial statements provided and there is no need for the directors' report to contain further financial information.* *With respect to non-financial information, in order for such information to be meaningful, it should be tailored from one business to another. We therefore do not think it is practicable or appropriate to further define the information that should be disclosed as a "non-financial key performance indicator" in the CO.*
Ernest & Young	*As noted above we are not in favour of introducing a business review for private companies.*
HKEx	*I believe that each company would be unique and it would be difficult or impractical to specify the key financial and non-financial performance indicators. This should be left to the companies themselves to decide and those chosen should be consistently calculated, applied and disclosed.*
CPA Australia	*The four main generally accepted perspectives for key performance indicators are based on finance, customer, internal process and learning/innovation perspectives (based on the balanced score-card). The current financial performance indicators and external financial reports prepared by directors are adequate to suit the needs of the majority of investors and associated stakeholders.* *For non-financial key performance indicators companies there are a few which directors should provide a view upon:* • *Customer feedback on how the customer perceives the quality and usefulness of the companies products and services* • *Employee satisfaction and development are also key indicators given that many of Hong Kong's companies are serviced*

	based • *Development and innovation activities carried out within the company or through their associates are also an important measure of the company's ability to continue to grow to service both customer and market needs* • *The performance of directors should also be assessed to ensure that they are achieving the goals (especially the non-financial key performance indicators) that they include in their forward looking statement.* *It should be noted that the Companies Ordinance should not be too prescriptive with regards to the Key Performance Indicators due to the infinity variety of business operations and market segments. Rather this requirement should mandate the publication of a few key performance indicators and in addition directors should publish others which are critical to the operation of their business and which are seen to provide sufficient and useful information to the impacted stakeholders of each business.* *This change is also in keeping with trends in many countries (such as the U.K. and Australia) where directors are required to report on both financial and non-financial key performance indicators as well as the company's Corporate Social Responsibility activities.*
The Society of Chinese Accountants & Auditors	*There is no international consensus on this requirement. If such requirement is imposed, a clearly defined basis and a consistent application should be required.*
The Chartered Institute of Management Accountants	*Professional personnel with management accounting experience should provide comments and give guidelines*

Question 6 **Do you have any other suggestions on matters that should be covered in the business review?**	
The British Chamber of Commerce	*SME's should have simpler reporting requirements.*
Robert Kenrick	*As an investor, I am interested in the directors' views on the growth potential of the various business sectors and innovations in the company's business. However I should not want too much commercial information given away to competitors and as a director I think it unwise to require directors to issue profit forecasts.*
Arthur Lam, Arthur Lam & Co. CPA	*No. Please let the listing rules do the job.*
Paul Mok	*I am against the idea.*
Victor Ho	*No comment*
KPMG	*As noted in our answer to question 4, we do not support introducing such a requirement into the CO and consider that it is better dealt with in the Listing Rules, with additional guidance from regulators if necessary.*
Respondent A	*We have no other suggestions.*
The Law Society of Hong Kong	*No.*
Deloitte Touche Tohmatsu	*Rather than mandate specific indicators that should be analysed in the directors' report, it may be more useful to require a narrative disclosure by the directors of the process that they have followed in setting their performance measurement targets and how they have evaluated themselves at the end of the period. Again, it may be more appropriate for this requirement to be included in the Hong Kong Stock Exchange's corporate governance disclosure requirements, rather than in legislation, particularly as it would be most relevant to listed companies.*
The Institute of Accountants in Management	*(a) Board of Directors attendance statistics; (b) Senior management turnover rate*
Canadian Certified General	*History of non-compliance with relevant laws that the company may suffer from financial losses.*

Accountants Association of Hong Kong	
The Hong Kong Institute of Chartered Secretaries	*Please see paragraph 5 above.*
The Association of International Accountants	*Information relating to company initiatives in environment conservation, employee and community developments which are now recognized as corporate social responsibilities.*
Hong Kong Institute of Certified Public Accountants	*We recommend that the requirements be kept at a very high level, to discourage "boiler plate" reporting.*
Ernest & Young	*As noted above we are not in favour of introducing a business review for private companies.*
HKEx	*I note that paragraph 4.3 of the consultation paper makes reference to the need to describe the risks and uncertainties facing the company but does not specifically require a discussion of how the company has or intends to deal with such risks. I would therefore suggest that these should be covered where a business review is included.* *Other disclosures could include whether there has been a review of the effectiveness and proper operation of company's internal controls together with the benchmarks referred to when undertaking the review. These matters are more relevant to larger companies where there is greater separation of ownership from management and it may be appropriate to exempt small private companies from this requirement.*
CPA Australia	*Other areas that should be considered are statements that:* • *Consider how the predicted economic climate will impact the company's operations* • *Discuss any major market trends or competitive trends which are considered to impact the company's operations*
The Society of Chinese Accountants & Auditors	*Sales forecast and budget, going concern evaluation and similar evaluation may help the user in evaluating the listed companies or those companies with public interest.*

The Chartered Institute of Management Accountants	*No, as the listing rules have already given guidelines for listed company; Not necessary for SME*

CLP *(Q. 4, 5, 6)*	*We support the proposals to require companies (unless otherwise exempted) to prepare a more analytical and forward-looking business review and to include financial and non-financial key performance indicators in the business review, in order to provide a balanced and comprehensive analysis of the development, performance and position of the business of the company. This is in line with the international trend to enhance transparency and to provide more forward-looking information in company's reporting.* *It should however be recognised that the presentation of business review in listed and unlisted companies is likely to be different. For listed companies, a business review is normally included as a separate section from the directors' report in the annual report. The proposal should allow flexibility for companies to provide a cross-reference in the directors' report to a business review which is separately set out in the annual report.* *In respect of the proposal to include particulars of any important events affecting the company which have occurred since the end of the financial year, we suggest the provision should clearly mention that such events are only required to be reported up to the date of the directors' report.*
The Chamber of Hong Kong Listed Companies *(Q4-6)*	*As for the contents of the Directors' Report, we agree to the proposed changes. In fact many listed companies are already practicing the proposed changes, such as the forward looking business review; whereas ratios to illustrate financial and non-financial key performance indicators are widely in use.* *As for CSR, it is the Chamber's objective to promote CSR amongst our members. In fact in the Corporate Governance Charter recently launched by the Chamber, we included a statement specifically about CSR principles; in the Hong Kong Corporate Governance Excellence Awards instituted by the Chamber, a special award for CSR is created. These measures are designed to maximize awareness of listed companies about the importance of CSR and to encourage them to actively adopt such principles.* *Having said that, we feel that such changes should be made, if they are not already, in the Listing Rules for them to be applicable to listed issuers only. This ensures that all listed entities, including those domiciled in other jurisdictions would also be subjected to the same requirements. For non-listed entities, they are welcome or encouraged to disclose the same but it is not necessary to make them do so in a mandatory manner.*

Hong Kong Bar Association *(Q4 - Q6)*	*Except for the proposal in paragraph 4.3(a) and (b), the Bar does not support this proposal. We note that the proposal in paragraph 4.3 of the Consultation Paper represents a substantial incorporation of the relevant UK legislation (s.234ZZB of the Companies Act 1985 which came into force on 1.4.2005 and s.417 of the Companies Act 2006 which will come into force in October 2007). In our view, such a wholesale incorporation is unwarranted for the reasons set out below.* *The proposal imposes a duty upon all companies (with the exception of certain exempted companies, which will be discussed in our comments on Question 17 below) to provide a business review which includes a whole array of information and analyses not required under the present s.129D such as: particulars of important events affecting the company, likely future developments in the business, and an analysis of the business with reference to financial and (where appropriate) non-financial performance indicators eg. information relating to environmental and employee matters.* *The first point we note is that the application to all companies travels beyond the recommendation of the SCCLR. In paragraph 23 of the Consultation Paper on Phase I of the CGR, the SCCLR deals with the position of listed companies and recommends various more qualitative and forward-looking disclosure (including the company's purpose and strategy, and employees, environmental and community/social/ethical matters). It is not the recommendation of SCCLR that such additional disclosure requirements should also be imposed on private companies.* *Second, there is no stipulation as to the depth or intensity of the review. Plainly, it is inappropriate to require directors of all companies, irrespective of their size and profitability, to conduct the same level of business review. It should be noted that under the relevant UK legislation, the intensity of review has to commensurate with "the size and complexity of the business". Such formulation is not, however, without problem as it is uncertain and depends to a large extent on the subjective view of the directors. It may also have the effect of robbing the provision of its teeth by providing an excuse for a company to frustrate the purpose of the review by giving minimal disclosure on the ground that although the size of the business is substantial, its business is not sufficiently complex as to warrant a full scale or in-depth review.* *Third, the matters required to be disclosed in the business review are open to objection. Insofar as "likely future developments" are concerned, disclosure may be prejudicial to the company, eg. disclosure of contracts or business opportunities which the company is contemplating or planning to pursue. This is important as unlike director, a shareholder does not owe any fiduciary duties to the company, which means that a shareholder in possession of such confidential information is free to use the information to advance his own interest even though such use is not in the interest or for the benefit of the company.* *We note also that s.471(10) of the Companies Act 2006 specifically provides for an exception to disclosure where it would be seriously prejudicial to the interest of the company possibly to prevent possible abuse of this nature. However, there is no similar suggestion in the proposal.* *Fourth, on the use of non-financial key performance indicators, a few points are worthy of consideration:-* *(1) even under the current Listing Rules (Main Board) (paragraph 52 of Appendix 16), the provision of key performance indicators are only "recommended" and "encouraged" and not mandatory;*

	(2) under s.417(5) of the Companies Act 2006, which are applicable only to listed companies, there is a specific exemption for "medium size" companies under s.417(7); and *(3) whilst the concept of corporate social responsibility is beginning to gain more prominence in the UK, it is yet to be widely received in Hong Kong, and its relevance is largely limited to listed companies. Indeed, the Consultancy on International Institutional Investor's Attitude towards Corporate Governance Standards in Hong Kong under the CGR (2003) shows that institutional investors are not particularly influenced by social or human resources information disclosure (paragraph 4.2.2.7). In any event the above applies only to listed companies, and there is no evidence to suggest that the investing or corporate activities of private companies are in any way concerned with or affected by such non-financial disclosure.* *Finally, the exemption granted by s.141D (which will be the only exemption applicable to the requirement of business review) only applies to a private company where all the shareholders have to agree in writing. This creates problems where there exist disgruntled minority shareholders, who will be able to veto exemption and put the company to the trouble and expense of preparing a business review when one is plainly unnecessary or the costs involved is disproportionate to the benefit of such review (see our comments to Question 17 below).* *For the above reasons, the Bar is of the view that:-* *(1) disclosure of information in the proposed business review should be limited to that set out in paragraph 4.3(a) and (b) of the Consultation Paper; and* *(2) the exemption in s.141D should be expanded (eg. majority as opposed to unanimous shareholders' approval) in order to ensure that small private companies could be relieved of this obligation with the approval of the majority of shareholders.*

Question 7 **Should directors' reports (unless otherwise exempted) be required to include information on:** **(a) any significant difference in valuation between the market value of the company's non-current operating assets shown on the balance sheet as consist of interests in land and buildings and its book value to the extent practicable and, if so, what should be the appropriate information sources?** **(b) equity linked agreements which subsist at the end of the financial year or which the company has entered into in the financial year, if the issue of shares under such agreements has a potential to dilute existing shareholders' interests?**	
The British Chamber of Commerce	(a) *Agreed.* (b) *Agreed. This also includes matters relating to employee share options etc.*
Robert Kenrick	*(a) No. Vague directors' valuations could be misleading. This information is only relevant to the shareholders (not creditors, since banks usually have a prior charge) and should therefore be required (if at all) from listed entities only. In the case of listed entities a professional valuation should be required every three years, but this matter is better dealt with in the listing rules.* *(b) Yes, if not disclosed in the Earnings per Share calculation in the notes to the financial statements.*
Arthur Lam, Arthur Lam & Co. CPA	*(a) & (b) We agree to change the Ordinance to cover the issue similar to those of above.*
Paul Mok	*(a) & (b) NO. The above issue, if important enough, is better dealt with in the realm of financial reporting standards*
Victor Ho	*(a) Yes. It is suggested that the non-current operating assets whether in form of land and building, their market values can be obtained from the surveyors. However, the <u>Crown Rent and Rates demand notes</u> issued by the Rates and Valuation Department can be employed a <u>one of the sources of information</u> in the measurement and valuation of the Company's premises.* *(b) No comment*
KPMG	*(a) We have some reservations about this proposal. In our view, such market information should only be disclosed by directors if it is placed in its proper context. That is, the reader needs to be told:* *(a) the source of the market information; and* *(b) further information concerning the relevance of that market information to the company's property, for example, any differences in age, location, size, use etc. which could materially contribute to a difference in valuation between the properties which were the subject of the market information obtained and the company's own properties.*

	We consider that to make meaningful disclosure of information with respect to (b) could well be onerous on the directors and may result in the need to involve professional experts. And yet without disclosing this information, the reader of the directors' report could be materially misled by any market information disclosed. On balance, we would therefore not recommend introducing this new disclosure requirement. *(b) We support this proposal.* *NB If the company entered into such agreements during the year, but they no longer subsist at the year end, then presumably they no longer have any potential to dilute existing shareholders' interests. We therefore consider that extending the proposal to those "which the company has entered into in the financial year" is not necessary.*
Respondent A	*In respect of (a) and (b);* *We do not believe the proposed information to be included in the directors' report is more informative and objective than the information already required to be presented in the financial statements. The provision of only selected financial information on the directors' report may also be misleading and may place an inappropriate burden on management in respect of the valuation assessments.* *Financial statements prepared in accordance with the HKFRS already include similar market based measurements and disclosures, and in the case of listed companies also the effects of potential dilution of shareholders' interests. It should be noted that disclosures will be further enhanced with the implementation of HKFRS 7 Financial Instruments: Disclosures.* *While disclosures of financial information in the directors' report may serve to highlight some important aspects of the company's affairs, we believe the scope and objective of the directors' report should be addressed first, before the individual elements of the report can be evaluated and decided on.*
ACCA	*(a) We disagree to this proposal on the ground that this could be practically infeasible. Where fair values need not be adopted or disclosed in the financial statement, we strongly believe that the feasibility of obtaining assets' fair values, together with the significance of the disclosure were thoroughly studied during the process of accounting standards setting. As such we do not consider it appropriate to impose additional burden on directors to identify these fair values.* *(b) We support this proposal as this helps protect the minority shareholders' interests especially in the unlisted companies.*
The Law Society of Hong Kong	*(a) No. Principles governing the valuation of assets can be left to the HKFRS.* *(b) Yes because (i) equity linked agreements affect shareholders' interest and (ii) the cost of compliance should not be too great.*
Deloitte Touche Tohmatsu	*(a) We acknowledge that information on market value may be useful to members. Our concern is that the costs of obtaining relevant and reliable market value may outweigh the benefits of such information. Some relevant consideration points are as follows.* *i. It is not clear how "non-current operating assets" are defined, which may potentially encompass "Property, Plant and*

	Equipment" under HKAS 16, "Investment Property" under HKAS 40 and "Intangible Assets" under HKAS 38. Furthermore, interests in leasehold land are accounted as "Prepaid lease payments" under HKAS 17. Is the requirement restricted to "Land and buildings" or does it cover all non-current operating assets under HKAS 16, HKAS 40, HKAS 38 and HKAS 17? *ii. We understand that the Working Group does not mandate valuation from an independent valuer. However, in practice, valuations based on information from newspapers or sale of comparable property may be limited to properties which are frequently transacted. In practice, an independent valuer will normally be engaged if the directors believe that the market value varies "significantly" from the carrying amounts. Furthermore, if the requirement is intended to cover other non-operating assets, measurement reliability would be a challenge for assets which are rarely sold or transacted (such as patents, trademarks, specialised plant and machinery).* *iii. HKFRSs includes an impairment requirement which ensures that the carrying amounts of assets are adjusted downward to the recoverable amount, which is determined as the higher of value-in-use or fair value less cost to sell. The proposal under 4.5(a) would result in the provision of additional information to members in the scenario when the market value is significantly higher than the carrying amount. If the reporting entity intends to recover the asset through usage rather than through sale, the market value of the asset may not be relevant to members.* *iv. Information on market value or fair value may be available in the financial statements under the following circumstances:* • *HKFRSs provide an accounting policy choice to apply the "Revaluation Model" or the "Fair value model" for assets under HKAS 16, HKAS 38 and HKAS 40. HKAS 8 requires the directors to apply accounting policies which are more relevant to users, to the extent that the measurement basis can be reliably obtained.* • *HKAS 40 requires disclosure of the fair value of investment property if the investment property is measured under the cost model.* *(b) We agree with the proposal. We believe the incremental costs in obtaining such information are likely to be minimal. Under the current HKFRS framework, the impact of potential dilution on earnings is provided in the diluted earnings per share disclosure under HKAS 33, which is only mandatory for listed companies and companies which are intended to be listed. In addition to HKAS 33, there are various disclosure requirements in HKAS 32/HKAS 39 and HKFRS 2 in respect of convertible instruments, warrants, options issued by the reporting entity. However, the disclosure requirements in these standards are likely to be "scattered" in various notes to the financial statements. We believe it will be useful to "centralise" the disclosure of all outstanding instruments which may potentially give rise to a dilution effect.*
The Institute of Accountants in Management	*(a) Yes, but the **source of valuation information** should also be cleared stated.* *(b) Yes*
Canadian	*(a) & (b) It should only apply to listed companies or public interest companies.*

Certified General Accountants Association of Hong Kong	
The Hong Kong Institute of Chartered Secretaries	*(a) We do not find it necessary for companies to include in their directors' reports information concerning significant difference in valuation between the market value of the company's non-current operating assets shown on the balance sheet and its book value. Though such information shows the prevailing value of the property, it does not reflect the revenue or profit (which is usually the main concern of the shareholders and potential investors) of the company for the year concerned unless realized. Hence, such additional information may not be crucial for the shareholders.* *It is further proposed that instead of an independent valuation, the company may obtain the market value of the property through sources such as newspapers or sale of a comparable property in the same building. We do not find this a credible source of information. In addition, for overseas properties or properties situate in the PRC, it might be difficult to obtain reliable transaction records of comparable properties. Nevertheless, we have no objection to companies putting such information in the notes to the accounts provided that the market value of the property is based on professional valuation.* *(b) We agree that information concerning the equity linked agreements subsisting at the financial year end or which the company has entered into in the financial year should be disclosed in the directors' reports. It is important for shareholders to know the extent to which their interests will be diluted by such agreements upon the exercise of the rights contained therein.*
CLP	*(a) We do not see great benefits in requiring companies to include in their directors' reports information concerning significant differences in valuation between the market value of the non-current operating assets shown on the balance sheet and their book value, if such market value is not obtained from a credible source to make it meaningful for comparison. Obtaining an independent valuation of the non-current operating assets between balance sheet dates by companies would not be desirable from the cost perspective.* *The suggestion to obtain information through sources such as newspapers or sales of a comparable property cannot work, as it contemplates directors of a company reading the property advertisements of newspapers in every city in which the company has real estate. This is not practicable. Furthermore, the reliability and comparability of the asset values obtained through such sources is questionable.* *(b) We agree that information on equity linked agreements which subsist at the end of the financial year or which the company has entered into in the financial year should be disclosed in the directors' report.*
The Association of International Accountants	*(a) Yes. Independent professional valuation every two years, directors' valuation in between (giving bases of valuation).* *(b) Yes. Disclosure requirements should include names of shareholders, existing shareholdings, options granted, option price, exercise period, shareholdings (number and percentage) if options exercised.*

Hong Kong Institute of Certified Public Accountants	*(a) We have some reservations about this proposal. In our view, such market information should only be disclosed by directors if it is placed in its proper context. That is, the reader needs to be told:* *(a) the source of the market information; and* *(b) further information concerning the relevance of that market information to the company's property, for example, any differences in age, location, size, use etc. which could materially contribute to a difference in valuation between the properties which were the subject of the market information obtained and the company's own properties.* *We consider that to make meaningful disclosure of information with respect to (b) could well be onerous on the directors and may result in the need to involve professional experts. And yet without disclosing this information, the reader of the directors' report could be materially misled by any market information disclosed. On balance, we would therefore not recommend introducing this new disclosure requirement.* *The above issues, if important enough, should be addressed by financial reporting standards.* *(b) We support this proposal. However, if the company entered into such agreements during the year, but they no longer subsist at the year end, then presumably they no longer have any potential to dilute existing shareholders' interests. We therefore consider that extending the proposal to those "which the company has entered into in the financial year" is not necessary.*
Ernest & Young	*(a) We disagree with the proposed changes because this is already adequately covered by accounting standards. Where the revaluation method is adopted for items of land and buildings, this information is already disclosed in the financial statements. For those entities adopting the cost model, under accounting standards, information about fair value is encouraged but not required. Where the cost model for land and buildings is adopted we would question the need to mandate that the market value be disclosed given such assets, will typically be for long term use in the company and market values may not be of such importance to the users. We prefer that such requirements are kept within the requirements of accounting standards and in the financial statements rather than as a requirement for the directors' report.* *(b) We disagree with the proposed changes. We consider that this matter is already adequately dealt with by accounting standards for disclosure in the financial statements.*
HKEx	*I have concerns on the practical application of the proposal in Question 7(a). The consultation paper does not define what it means by "market value" or what are "non-current operating assets" although it appears its focus is on land and buildings only. If this proposal is adopted, I would suggest that these should be clearly set out.* *The consultation paper has rightly identified the problem of the possible unreliability of the valuations and I would comment that if the information is not reliable, the disclosures could be potentially misleading especially where the directors making the valuations are not professionally qualified or experienced valuers.* *I agree to the proposal under Question 7(b) but what minimum information should be disclosed in the respect of the equity linked agreements should be specified.*

The Chamber of Hong Kong Listed Companies	*Regarding the two recommended disclosures on significant difference in valuation of the company's non-current operating assets and equity linked agreements, we are of the view that it is important for listed companies to provide fuller financial information to shareholders and members of the public. In this regard, relevant arrangements should be made in the Listing Rules; rather than in the Companies Ordinance where much smaller or private companies would be covered, and in the process, increase the administrative time and costs.*
CPA Australia	*The proposals outlined for Question 7a and 7b are supported as presented.* *Comments for question 7a* *The directors reports should highlight any significant difference in valuation between the market value of the company's non-current operating assets shown on the balance sheet as consist of interests in land and buildings and its book value to the extent practicable. The reporting requirement should utilize the concept of materiality as described in accounting standards which should minimize the reporting requirements to times when a material difference is observed.* *Providing information in this fashion will make the financial statements more transparent by:* • *Providing more accurate and timely financial information to both shareholders and stakeholders about the valuation of assets and* • *Ensuring that directors remain focused on ensuring that assets are used in the most productive manner to provide the greatest return for investors. For instance in Australia during the 1980s and 1990s banks sold most of their retail premises on a sale and lease back arrangement to capitalize on the considerable increase in the property assets valuations over the preceding 30-50 years.* • *Will provide additional support for corporate governance by high-lighting to all directors the changes (both increases and decreases) in the valuation of assets allowing for a more open discussion on the best approaches to managing those assets.* *It has been noted in the consultation document that "... directors are not expected to obtain a valuation from an independent valuer..." so as to comply with the requirement. However it may be problematical for the directors to provide ad-hoc valuations and still be carrying out their fiduciary obligations hence directors may be tempted to seek independent valuations. Thus the report should include information sufficient for shareholders and stakeholders to understand the basis for any valuation carried out by the directors (either ad-hoc valuations or independent valuations from an authorized valuer).* *Comments for question 7b* *The directors' reports should highlight any equity linked agreements which subsist at the end of the financial year or which the company has entered into in the financial year, if the issue of shares under such agreements has a potential to dilute existing shareholders' interests.* *The issue of share options and equity linked agreements have featured substantially in regulator reviews over the last 7 years (after specifically the bursting of the Telecommunications bubble in 2000-1). These comments are completely in agreement with the*

	public consultation document which high-lights that in an efficient and transparent share market, transactions should occur at transparent prices and under fair conditions that protect shareholders' interests. *As noted for question 7A the reporting of such arrangements will provide additional support for corporate governance by high-lighting to all directors the number and extent of the agreements and their impact on diluting the share price.*
The Society of Chinese Accountants & Auditors	*It seems, in substance, the financial reporting standards, including HKAS 16, HKAS 32, HKAS 36. HKAS 38, and HKFRS 7, have similar requirements. It is better to consider whether they would be overlapped requirements between the Companies Ordinance and the financial reporting standards.*
Association of Women Accountants (Hong Kong) Limited	*Disclosures of the market value of most non-operating assets including land and buildings, and investment properties are already required under the Hong Kong Financial Reporting Standards ("HKFRS"). Therefore, additional disclosure of the directors' opinion on their market values in the directors' report shall not be required.*
Hong Kong Bar Association	*(a) The Bar queries whether this proposal serves any useful purpose. As we understand it, under the current auditing standards, if the auditors have any doubt on the carrying value of the non-current assets of the company, it may ask the directors to obtain independent valuation on such assets to satisfy the auditors that the value recorded in the accounts does not differ substantially from the market value. If the directors fail to obtain such valuation or that the valuation shows that there is a substantial diminution in value of the assets, the auditors will insist that the directors should make sufficient provision for impairment in value of the assets. If the directors fail to make such provision, the auditors will qualify the accounts on the lack of provision for impairment in value.* *In view of this regime, it is difficult to see what further benefit the proposal in paragraph 4.5(a) can add.* *Besides, it is difficult to see how the directors can put forward any reliable "market value" of the company assets if they are not expected to carry out or commission an independent valuation, and any information which they are able to tender may well be inaccurate or misleading, in which case they would only serve to confuse rather than assist the shareholders in understanding the financial position of the company.* *Still further, if the "market value" put forward by the directors is in fact incorrect, the company and/or the directors may well incur liability for negligent misstatements, and in order to avoid incurring such liability, the company and/or directors will be inclined to seek an independent valuation if they are to provide such information in the directors' report, which would completely defeat the purpose of the proposal.* *(b) Subject to a clear definition of "equity linked agreements" (preferably with reference to the effect or likely effect of diluting existing shareholders' interests), the Bar supports this proposal. We believe there is value in requiring disclosure of agreements which will or may result in the company issuing new shares. This is because under the existing law, the general*

	meeting can give a general mandate to the board of directors to allot shares, which mandate is valid for the year up to the next AGM, see s.57B(2)&(3). Such general mandate is commonly given by the shareholders of listed companies at AGM. This means the directors can have ***carte blanche*** *approval to allot shares without reference to the members in general meeting, and if they abuse their power the shareholders may not have the means to identify such abuses. The proposed disclosure would be able to address, to some extent, this vacuum of information available to shareholders.*
The Chartered Institute of Management Accountants	*(a) Agree, but whether it is significant will require professional consultant's opinions* *(b) No, this is already included in the financial statement*

Question 8 **Should directors' reports contain a statement to the effect that, so far as each director knows, there is no relevant audit information of which the auditors are unaware, and that each director has taken all the steps he should have taken to make himself aware of such information and to establish that the auditors are aware of it?**	
The British Chamber of Commerce	*No. This is usually already covered by a letter of representation to the auditors.* *It does not need to be included additionally in the directors' reports, if the accounts are audited; the UK has only included this in their 2006 Companies act because most UK accounts are not now audited.*
Robert Kenrick	*No (see covering letter.)* *From covering letter:* *"It is the responsibility of the directors to prepare accounts that show a true and fair view of the company's state of affairs and of its profit or loss for the period. It is the auditors' responsibility to express an opinion on those accounts and they should make all the tests and enquiries that they require to form that opinion. It cannot be the directors' responsibility to spoon feed the auditors with all the information that they require to form their opinion. For one thing, most directors have a fairly vague idea of the audit process, not to mention accounting standards.* *A major objection to the proposal is that it deals with what Donald Rumsfeld would call "unknown unknowns". As a non-executive director I cannot know what I have not been told by management. Unlike the auditors I do not have a staff of assistants and a budget of a thousand man-hours to trawl through the accounting records testing systems and looking for exceptional items. Worse, without reviewing the audit working papers myself I do not know what the auditors do not know.* *A further problem with the proposal is in the terminology used. The UK Companies Act requires a director to take "all the steps that he ought to have taken as a director in order to make himself aware of any relevant audit information and to establish that the company's auditor is aware of that information." Note that the term is "relevant", not significant or material. If a non-executive director is doing his job properly, he should be aware (by discussions with the senior executives and internal auditors) of significant events which impact the company, such as a major contract gain or loss, a fraud or a major credit loss. It is not too onerous (and is a routine part of the Audit Committee proceedings at Fubon) to ensure that the auditors are aware of such significant events and agree about their accounting implications. "Relevant audit information", on the other hand, encompasses all the information contained in the auditor's working papers, which for a listed company typically amounts to ten or more box files. If all this information were not relevant to the audit, it would not be in the working papers. Such information would include, for example, details of the company's procedures for capturing leasing transactions and recognising the income thereon, something that a non-accountant would find hard to understand.* *The logical response by non-executive directors to this proposal (assuming that the provisions of s418 of the UK Companies Act 2006, including penalties for default of up to two years imprisonment, were adopted) would be for them to hire external auditors directly. The statutory auditor's role would then be reduced to reading those auditors' working papers and attending a board*

	meeting at which the financial statements were discussed in exhaustive detail. I understand that this is indeed the procedure in some European countries. In practice this is unlikely to happen and instead: *i. Board meetings to approve the financial statements will become a paper shuffle, as representations are passed from management to the directors, from the directors to each other, from the directors to the auditor and possibly from the auditor to the directors ("to establish that the company's auditor is aware of that information");* *ii. It will become impossible for the auditors to be sued by the directors in the case of an audit failure (due both to the legal principle of estoppels and to the threat of retaliatory action by the auditors which could land the directors in prison);* *iii. It will become much easier to imprison directors of failed companies, even when they are not party to any fraud; and* *iv. Fewer lawyers and accountants will be prepared to serve on listed company boards. It will of course still be possible to fill boards with independent directors who are unaware of the provisions of the Companies Ordinance, but I cannot see that this would be a beneficial outcome in terms of public policy.* *Rather than following the provisions of the UK Companies Act, I suggest that the working group look instead at ss.295 and 295A of the Australian Corporations Act. These sections require a statement from all the directors that the financial statements comply with the act including compliance with accounting standards and the true and fair view and require supporting declarations from the Chief Executive and Chief Financial officers (whether directors or not). Since the CEO and CFO are, or should be, in a much better position to make such declarations than the non-executive directors, this is a far more effective tool for improving reporting standards."*
Arthur Lam, Arthur Lam & Co. CPA	*We consider that the required declaration above is too harsh for the directors who are not in the position in handling financial reporting. And many directors' expertise is on the area of other management; i.e. operation.* *Instead, a declaration for "to best of his/her knowledge, there is noting come to his/her attention that..," could be a better consideration.*
Paul Mok	*The recommended statement is totally unnecessary. It will only serve to transfer risk exposure directly onto the shoulders of individual company directors.* *The recommendation follows the trend set by the US, most notably by the Sarbanes-Oxley Act, requiring directors to provide full information to auditors covering not just what they know, but what they ought to know. Directors are seen as convenient targets in cases of financial scandal or poor corporate performance. The US class actions against the directors of WorldCom, Enron and Global Crossing resulted in large settlements for their shareholders. The recommendation seems to encourage a litigation culture in Hong Kong by increasing duties placed on directors of Hong Kong companies.* *I repeat my belief that good corporate governance in Hong Kong will come from market forces, not rule-based legislation.*
Victor Ho	*Yes. It is recommended that apart from the statement showing that there is no relevant audit information of which the auditors are unaware, the directors should refer such a statement to the letter of representation given to the auditors. In this connection,*

	relevant provisions of the Companies Ordinance concerning the penalties to be imposed on the misleading information produced by the directors should also be given.
KPMG	*We support the proposal that directors' reports contain a statement to the effect that "so far as each director knows there is no relevant audit information of which the auditors are unaware". We agree that it is important that each director is made aware of his/her personal responsibility for the omission if he/she is aware that material information has been withheld from auditors.* *However, we have reservations about extending that requirement to require that "each director has taken all the steps he should have taken to make himself aware of such information and to establish that the auditors are aware of it". We are concerned that this requirement may not be practicable as it appears to extend in effect to all "relevant audit information". Given this broad scope, we are concerned that the proposed requirement will leave directors unclear as to the extent of the "steps [they] should have taken" to inform themselves of all the information that the auditors need to know and then to establish the extent to which auditors are aware of all of this information.* *Therefore, while we support the proposal to make each director personally responsible if they are aware that material information has been withheld from auditors or misrepresented to them, we do not support requiring each director to state in the directors' report that he/she has taken all steps necessary to ensure completeness of the auditors' knowledge in respect of all relevant audit information.*
Respondent A	*Yes, we agree with the proposal. However, we recommend that the provision should clearly refer to directors being required to take all "reasonable" steps. Relevant professional bodies should be asked to provide guidance as to what constitutes reasonable steps.*
ACCA	*We consider this proposal too stringent as it implies that directors know what information the auditor is unaware of. The proposal assumes a positive duty of directors to find out the type of information which is relevant to auditors for them to fulfill their duties, which in practice is too onerous. Whilst we support the position that an auditor should have complete access to information relevant to the audit, the auditor should decide what information he needs and to ask all the questions he wants to the directors. As such the directors should comply honestly and fully with requests for information by the auditor in relation to the audit and should not withhold any information from the auditor that they consider to be relevant to the audit.*
The Law Society of Hong Kong	*Yes. It is implicit in the directors' duty to prepare true and fair accounts and to seek audit opinion confirming that statement.*
Deloitte Touche Tohmatsu	*The proposals raise a number of practical issues.* *Under the audit model the responsibility is on the auditors to gather evidence to support their opinion on the view given by the financial statements. Although inquiries of the directors is one important source of such audit evidence, the auditors will also gather evidence from management, employees, third parties with which the company enters into transactions, third party professionals experts and other external sources. Accordingly, and also given that most directors will not be audit professionals, it*

	is not practical for directors to know that there is no relevant audit information of which the auditors are unaware. For the same reason, it would not seem practical for the directors to embark on taking all the steps that might be taken to make himself aware of such information and to establish that the auditors are aware of it.
The Institute of Accountants in Management	*Yes, but with great reservation in that unless the company ordinance can define comprehensively as to what information is needed or should be made aware to auditors, the directors would find it difficult to judge and to comply with this requirement.*
Canadian Certified General Accountants Association of Hong Kong	*Yes, but should it have been included in the representation letter?*
The Hong Kong Institute of Chartered Secretaries	*While this proposed statement can prompt the directors to take the auditing process seriously and encourage full disclosure of relevant information by the company, it may substantially increase the potential liability of the directors since it may be possible for parties other than the auditors, such as the shareholders and banks to rely on the statement and go after the directors if it turns out to be untrue. In reality, the auditors will always ask the company to produce a representation which is duly signed by the board. And this practice seems to have worked well in most circumstances.*
CLP	*No. Directors' reports should not be required to contain a statement to the effect that, so far as each director knows, there is no relevant audit information of which the auditors are unaware, and that each director has taken all the steps he should have taken to make himself aware of such information and to establish that the auditors are aware of it. Our reason for not supporting this proposed provision is that it would be impracticable of execution if this is to be a meaningful exercise, as opposed to a mere statement for apparent compliance. To discharge the responsibility of containing a statement to the effect required in the proposed provision, a company would require each of its directors being aware of (i.e. reading themselves) all information reviewed by the auditors and then comparing that information with the documents and information which directors have received themselves. The current common practice of the board making a collective representation to the auditors in respect of the information provided to auditors has worked well.*
The Association of International Accountants	*Yes*
Hong Kong Institute of Certified Public	*We support the proposal that directors' reports contain a statement to the effect that "so far as each director knows there is no relevant audit information of which the auditors are unaware". We agree that it is important that each director is made aware of his/her personal responsibility for the omission if he/she is aware that material information has been withheld from auditors.*

Accountants	*However, we have reservations about extending that requirement to require that "each director has taken all the steps he should have taken to make himself aware of such information and to establish that the auditors are aware of it". We are concerned that this requirement may not be practicable as it appears to extend in effect to all "relevant audit information". Given this broad scope, we are concerned that the proposed requirement will leave directors unclear as to the extent of the "steps [they] should have taken" to inform themselves of all the information that the auditors need to know and then to establish the extent to which auditors are aware of all of this information.* *Therefore, while we support the proposal to make each director personally responsible if they are aware that material information has been withheld from auditors or misrepresented to them, we do not support requiring each director to state in the directors' report that he/she has taken all steps necessary to ensure completeness of the auditors' knowledge in respect of all relevant audit information. At the very most, directors should only be required to take "all reasonable steps".*
Ernest & Young	*Whilst we agree in principle, we are concerned about the practical application of the specific requirements and the additional burden that this will place on the directors.*
HKEx	*I support the intention of the proposal but there may be practical difficulties in application and the possible concerns that may be raised by directors. I note that a similar provision has nevertheless been included in the UK Companies Act 2006.* *The requirement will apply to each director, and the question will arise as to how the company and each of its directors will evidence compliance with the provision. It would seem more practical that the directors provide confirmation that they have provided all relevant information that they are aware of which they believe would be material to the audit rather than a statement that there is no relevant audit information of which the "auditors are unaware". It would be difficult for a director to know what the auditor does not know even if the directors have provided the auditor access to relevant books and records and other information.* *How and whether the auditor has properly dealt with the information provided to him is also relevant. The directors' primary obligation should be to provide all relevant audit information to the auditor and perhaps the thrust of the proposed requirements should be that the directors have advised their auditors of significant transactions and events that they are aware of which are material to the financial statements being audited. Under current auditing practices a "letter of representation" is normally provided to the auditors by the directors as a body and the purpose of the letter is to remind directors of whether there were any significant matters which have not been drawn to the attention of the auditor. The letter usually lists the type of information sought by the auditor and perhaps these should be advised to directors at the outset of the audit and then followed by a written confirmation at the end of the audit.*
The Chamber of Hong Kong Listed Companies	*We agree it is part of the director's fiduciary duties to provide all relevant audit information to the auditors. We see the merit of companies establishing procedures and mechanisms internally, including setting up reporting structure with the management of the company, to make themselves avail of all necessary audit-related information.*

The Society of Chinese Accountants & Auditors	*We support this proposal.*
Hong Kong Bar Association	*The Bar supports this proposal.*
The Chartered Institute of Management Accountants	*Yes, but auditors to come up with some guidelines and reference point for the directors to follow as to what to disclose and what not to. Also it does not release the auditor's obligation to find out relevant auditing information themselves*

Question 9 **Do you agree that a separate directors' remuneration report should be prepared by:** **(a) listed companies incorporated in Hong Kong; and** **(b) unlisted companies incorporated in Hong Kong where holders of not less than 5% of the issued share capital or, in the case of a company not having a share capital, members representing not less than 5% of the total voting rights of all the members so request?** **IF YES, do you agree that the remuneration report should disclose full details of various types of benefits given to the individual directors by name, including basic salary, fees, housing and other allowances, benefits in kind, pension contributions, bonuses, compensation for loss of office and long-term incentive schemes including share options?**	
The British Chamber of Commerce	*Agreed. This is usual in other countries.*
Robert Kenrick	*No. This is adequately covered in the listing rules and I do not believe that it is relevant for unlisted companies.*
Arthur Lam, Arthur Lam & Co. CPA	*We think the existing disclosure in relation to directors' remuneration is good enough. But a demand to report directors' remuneration with 5% -members is good recommendation.*
Paul Mok	*(a) This issue is better dealt with in the Listing Rules. As a side issue, the Australian Workers' Union and the Business Council of Australia have expressed concerns that extensive disclosure of executive remuneration would provide a stimulus for increases in salaries.* *I am of the opinion that a microscopic scrutiny of directors' remuneration may distract CEOs, senior executives and workforces in general from their core function of value and wealth creation. Annual report readers may also be attracted to focus their attention on the wrong area, should a separate directors' remuneration report is required to be produced.* *(b) It is not necessary.*
Victor Ho	*(a) Yes. It is recommended that in the directors' remuneration report, the basis of calculation of remuneration, the disclosure of remuneration on a named list should be disclosed in the report.* *(b) No comment*
KPMG	*We do not support this proposal. We consider that so far as listed companies are concerned, the matter is adequately and appropriately dealt with in the Listing Rules. So far as other companies are concerned, we consider that while directors' contacts should be open to inspection by shareholders, we consider that including such personal information by name in the directors' report or financial statements is an unnecessary infringement of personal privacy.* *As per our answer above, we do not support disclosing such personal information, even on an aggregate basis by name. We would*

	further note that the greater the detail of the breakdown of the components of the package, the more the disclosure may appear to the individual concerned to be an infringement of personal privacy, much as publicizing that individual's tax return would be.
Respondent A	*Yes, we agree in principle with the proposal and its aim of improving transparency and corporate governance.* *However, we suggest evaluating the incremental benefits of issuing this information as a separate report. We believe the information may be effectively communicated through the directors' report or the financial statements.* *According to the proposal the directors' remuneration report (except for service contracts) is to be subject to audit. We recommend that consideration be given, in consultation with the HKICPA, to the audit reporting requirements, such as whether a separate audit report is required, and in doing so assess the costs versus benefits and any practical issues that need to be addressed.* *(a) We understand that the proposal would enable statutory backing to be given to the disclosures which are already required by the SEHK's Listing Rules. However consideration needs to be given to the inevitable changes to the Listing Rules as they respond to market demands which may not be easily accommodated by the CO.* *(b) We suggest that for unlisted companies consideration be given to limiting the minimum disclosure requirements where holders of 5% of more of the company make a request for directors' remuneration disclosures under the CO provisions. For example, disclosure could be limited to remuneration bands rather than by name of each individual director.*
ACCA	*We agree that individual director's remuneration package should be disclosed in both the scenarios as mentioned in (a) and (b) above. We consider disclosure in the financial statements adequate but appreciate that in particular for the situation where the preparation of such details depends on the request of shareholders, it may not fit in the timeframe of the preparation of financial statements. As such, we consider that a separate directors' remuneration report helps serve the purpose.* *However, we suggest that a predetermined timeframe should be set so that shareholders should make their request for such disclosure for a particular financial period within this timeframe. Where a request relates to previous financial periods, this will increase the cost burden of the company as the report is subject to audit and this is inconsistent with the primary objective of saving business costs.* *In respect of the information to be disclosed in the remuneration report, we consider that disclosure of the company's policy of fixing directors' remuneration package as well as the basis of remuneration help raise transparency.*

The Law Society of Hong Kong	*(a) This has already been regulated by the Listing Rules. Should avoid regulation by two different regimes serving the same purpose of proper corporate governance* *(b) If disclosure is not mandatory, 5% threshold is considered appropriate. Some members are of the view that any shareholder, regardless of the number of shares held in the company, should have the right to require full disclosure of remuneration packages to directors.* *Agree that remuneration report should include transparent details of remuneration and various benefits given to the directors. Whether this should be on an individual named basis for listed companies should follow those regulated by the Listing Rules (which is currently a recommended best practice but not a mandatory requirement).*
Deloitte Touche Tohmatsu	*We agree with the proposal. However, we believe the Working Group should consider providing additional guidance on the following areas as lack of guidance may potentially cause practical difficulties:* • *definition of "remuneration";* • *the disclosure requirements relating benefits in kind, e.g. whether benefits in kind should be provided on qualitative or quantitative basis. If quantitative information is necessary, how should such information be determined?; and* • *for unlisted companies incorporated in Hong Kong, how and when should the members make such request?*
The Institute of Accountants in Management	*Yes and agree*
Canadian Certified General Accountants Association of Hong Kong	*(a) Yes.* *(b) Yes* *Agree, the full details.*
The Hong Kong Institute of Chartered Secretaries	*(a) Presently, listed companies are already required under the Listing Rules to disclose in their financial statements the remuneration of directors on an individual basis. We consider that the present arrangement works well generally. As a matter of principle, we have no objection to the proposal of publishing separate directors' remuneration report which is an international trend. However, since the report will be subject to auditing and incur further costs, this may be a concern for listed companies of smaller size.* *(b) We have no objection to this proposal.* *We agree that full details of various types of benefits given to individual directors should be disclosed, whether in the financial statements or the proposed separate remuneration report so that the shareholders are given a full picture of the remuneration*

	received by individual directors.
CLP	*We support the proposals to have a separate directors' remuneration report and that the remuneration report should disclose full details of various type of benefits given to the individual directors by name.*
The Association of International Accountants	*Yes. In addition, where the total remunerations paid to (and benefits entitled by) an individual director exceed HK$5,000,000 in a year, details of the justification for the payment should also be disclosed. However, a balance between transparency and privacy should be struck in respect of details to be disclosed (e.g. directors' names may not be disclosed).*
Hong Kong Institute of Certified Public Accountants	*We do not support this proposal. We consider that so far as listed companies are concerned, the matter is adequately and appropriately dealt with in the Listing Rules. So far as other companies are concerned, we consider that while directors' contracts should be open to inspection by shareholders, we consider that including such personal information by name in the directors' report or financial statements is an unnecessary infringement of personal privacy.*
Ernest & Young	*(a) Whilst we agree with the proposal for a separate directors' remuneration report for listed companies, we consider that this is a matter for the Listing Rules rather than the Companies Ordinance.* *(b) We disagree with the proposed changes for unlisted companies. We do not believe that it will be beneficial to include additional information in a set of private company financial statements about directors' remuneration, over and above that already required by S161 of the Companies Ordinance.* *For listed entities, we agree with the proposal, although as noted above we consider that this is a matter for the Listing Rules rather than the Companies Ordinance.*
HKEx	*I would agree that a separate directors' remuneration report along the lines of your proposal would be useful but there should be safeguards to ensure that the provisions of the Privacy Ordinance are not breached. It however may not be appropriate to require the disclosure in private companies where ownership and management are substantially the same persons.* *I would suggest that rather than restricting the requirements to apply to listed companies incorporated in Hong Kong it should also apply to sizeable Part XI companies, or companies incorporated outside Hong Kong but with a place of business in Hong Kong.* *Paragraph 4.12 of the consultation paper states that information included in the directors' remuneration report, with the exception of service contracts, will be subject to audit. It is unclear why service contracts are excluded from the audit requirement especially where they may be linked or form part of a director's remuneration package.*
The Chamber of Hong Kong Listed Companies	*The Chamber supports good corporate governance and believes in raising the transparency of a company. We therefore agree to the proposed amendments concerning disclosure of individual's remuneration packages as stated in question 9 for listed companies but not private companies.*

CPA Australia	*The proposal is supported as presented.* *The publication of a directors' remuneration report will increase the level of transparency and enhance accountability to members. Such reports are standard in many jurisdictions around the world for instance they are required in the financial statements published in Australia.* *The publication of such information ensures that company directors can be held accountable not only for the financial performance of the company but also the remuneration they receive and its proportion with respect to the gross revenues and net profits achieved by their company. Such reporting will also provide a basis for competitive remuneration information to be developed in the public arena between companies in similar markets and of similar sizes.*
The Society of Chinese Accountants & Auditors	*We support this proposal.*
Association of Women Accountants (Hong Kong) Limited	*It is suggested that minimum requirement for the disclosure could be raised so that members holding not less than 20% of the issued share capital could direct a private company to disclose full details of individual directors' remuneration packages in its annual accounts.*
Hong Kong Bar Association	*(a) The Bar supports this proposal. In fact, disclosure of details of the individual director's remuneration packages is already catered for in paragraph 24 of Appendix 16 of the Listing Rules (Main Board). The proposal serves to give statutory force to this disclosure requirement.* *(b) Under the current regime, s.161 requires disclosure of the aggregate of directors' emoluments, pensions and compensation for loss of office. However, regulation 78 of Table A, which applies to most of the companies incorporated under the CO, stipulates that remuneration of directors shall be determined by the company in general meeting. In other words, for companies which adopt Table A as their articles, full disclosure of the director's remuneration package would have to be made to the members in general meeting in any event. To require the directors to prepare a separate remuneration report seems to be otiose.* *The position in the UK is similar - only the aggregate of the emoluments etc. have to be disclosed (unless the aggregate exceeds £200,000, in which case further disclosure in relation to the highest-paid director is required) (s.232 of and Schedule 6 to Companies Act 1985). Full disclosure and audit is only required in the case of listed companies (s.234B of and Schedule 7A to Companies Act 1985).* *We note that the proposal relating to unlisted companies is based on the Australian approach (s.202B of Corporations Act 2001), which requires disclosure of all remuneration paid to each director in a statement which has to be audited if requested*

	by either members with at least 5% of the votes which may be cast in the general meeting or at least 100 members who are entitled to vote at the general meeting. The latter requirement shows that the provision is targeted at large corporations with a substantial number of members. In our view, it is not designed for small companies and is probably superfluous if the companies have adopted Table A as part of their articles of association. *Thus if this proposal is to be retained, we recommend introducing exceptions:-* *(1) to cater for the situation where the directors' remuneration has already been approved by the company at general meeting; and* *(2) modifying the threshold for members' request to request from 5% of the members to a higher percentage of members who are not recipients of or otherwise interested in the remuneration in question.* *Where disclosure is required, we agree that full disclosure should be made with reference to individual directors.*
The Chartered Institute of Management Accountants	*(a) Yes as this is a requirement in the listing rules* *(b) Yes, to protect unlisted companys' investors – but 5% is too low*

Question 10 **We aim to revise the provisions regarding summary financial reports to make them more user-friendly from the company's as well as the members' viewpoints. Would you support amending the provisions along the lines as suggested in paragraph 5.4? Do you have any specific suggestions as to the form or contents of the summary financial reports?**	
The British Chamber of Commerce	*Agreed in principle.*
Robert Kenrick	*See covering letter.* *From covering letter:* *"The Working Group may be right in thinking that one reason why so few companies have produced separate summary reports is the requirement to obtain the shareholder's permission. It is noticeable that many more UK and Australian companies have adopted summary financial reports since changes to those countries' laws were made to allow summary financial reports to be the default option. However in Hong Kong many shareholders hold shares through their brokers' nominee companies to facilitate trading and therefore there tend to be fewer registered shareholders. St. George Bank in Australia has around 100,000 registered shareholders whereas Fubon has around 2,000. The expense of preparing and printing separate summary reports for less than 2,000 shareholders who might not want the full report would be greater than the saving in paper and postage.* *I fully agree with the Working Group that shareholders should be able to opt out of receiving annual reports altogether. My wife and I have several overlapping holdings and sending each of us a report is a complete waste.* *In Australia I have had considerable difficulty obtaining full financial statements from certain companies, who have required a formal letter addressed to the Company Secretary rather than returning a form to the share registrars. In view of this and the large number of shareholders in Hong Kong who hold shares through their brokers, I would suggest that companies wishing to avail themselves of the summary financial report provisions should be obliged to publish the full financial statements on their websites.* *Although the full financial statements have become very cumbersome since convergence with IFRS, the notes to the financial statements (which are almost all omitted in summary accounts) still provide essential information on estimates and other judgemental areas such as contingent liabilities and litigation. As a shareholder I still require the full financial statements in order to understand how these judgemental issues have been dealt with, in the absence of any reference to material estimates and judgements in the summary report.* *I would suggest therefore that the summary financial report should contain, in addition to the consolidated balance sheet, income statement, cash flow statement and statement of changes in equity, a discussion and analysis of material changes in balance sheet and income statement headings (see AASB 1039 para 5.3) and notes on contingent liabilities and other material estimates and judgements (including pension fund liabilities and litigation.) I would drop the requirement for a segmental analysis."*

Arthur Lam, Arthur Lam & Co. CPA	*We do not think there would be constructive for average investor to receive the simplified form of financial reports. If there is a call for simpler reports. The financial statements readers may have later found to be treated with "double standards". There are already products for report digest on the investment markets. Having two sets of reports may, on the contrary, cause more left-over which mean wastage.*
Paul Mok	*I support the laudable recommendations above to make the financial documents and summary financial reports more user-friendly from the company's as well as the members' viewpoints. The consultation paper quoted examples in the UK and Australia. I would like to supplement by relating the case in the US where listing companies are allowed to forward a summary financial report to their shareholders, while filing a full report with the Securities and Exchange Commission. The US view is that the full annual report "overwhelms the ability and willingness of many audiences to read and understand it while the cost to produce and distribute this communication continues to escalate, far out of proportion to its value"(Note[2])* *In particular, I hope the new CO will allow a company to send a member, at his request or with his consent in writing, a notice, in lieu of a soft copy or a hard copy of the financial documents or the summary financial report, to the effect that the financial documents can be read and downloaded from the company's website with effect from a particular date.*
Victor Ho	*Yes. It is recommended that in the light that in some rare cases, there may be some discrepancies found in the financial statements. Will there be <u>any channel given</u> in the front page of the annual report <u>directing the stakeholders how to communicate</u> with the <u>appropriate level of management</u> of the listed Group?*

KPMG	*We support the proposals in paragraph 5.4 as we consider that these offer a range of practical solutions to encourage the use of summary reports and will help provide information to shareholders that they find useful.*
	In terms of additional information that should be included in a summary financial statement, we would recommend that the financial information be expanded to include the following:
	• *the statement of recognised income and expense, or statement of changes in equity, as presented in the fall financial statements*
	• *the statement of cash flows, as presented in the full financial statements; and*
	• *a basis of preparation note, which would include as a minimum:*
	    • *an explanation of the basis of preparation of the summary financial statements; and*
	    • *a statement setting out the extent of compliance of the source financial statements with the applicable accounting framework.*

Respondent A	*Yes, we agree with the proposal. However, we also recommend that the summary financial reports requirements do not need to be extended to all companies, particularly companies that fall between listed companies and the companies qualifying under section 141D. We believe that the cost savings in these cases would likely not be significant.*

[2] Cook, M., and M.H. Sutton, 1995, "Summary Annual Reporting: A Cure for Information Overload", Financial Executive 11(1) : 12-15.

The Law Society of Hong Kong	*Agree save for the proposal to extend the definition of "entitled person" to include future shareholders. For listed companies, financial information is published on the internet. For unlisted public companies, financial reports can be obtained from the Companies Registry. In these cases, there should be no need to send such information through other modes to persons who are not shareholder. Financial reports of private companies are not public information and the rights to receive such information should not be given to persons who are not yet shareholders.*
Deloitte Touche Tohmatsu	*We agree with the proposal. To avoid entities from incurring additional costs in preparing Summary Financial Reports, we believe the contents of the Summary Financial Report should mainly comprise financial information extracted or summarized from the annual report or audited financial statements, such as:* • *Corporate Governance Report (CGR) or a summary of CGR;* • *Management's discussion and analysis (MD&A) or a summary of MD&A;* • *Financial information potentially including:* - *Balance sheet, profit and loss, statement of changes in equity and cash flows (if the reporting entity is presenting group accounts: the consolidated balance sheet, profit and loss, statement of changes in equity and cash flows); and* - *Relevant notes which are of interest to members (e.g. directors'/auditors' remuneration, earnings per share, dividends, related party disclosures, changes in accounting policies and the impacts, critical accounting judgements and key sources of estimation uncertainty, share capital movements etc); and* • *A statement which provides that the financial information is extracted from the audited financial statements in which an unqualified audit opinion has been given by the auditors. Additional information should be disclosed if the auditors issued a qualified opinion.* *In addition, we strongly encourage the Working Group to consider the following more environmental friendly alternatives.* • *Allowing the entity to send a notice to members notifying them that the full set of financial statements (or annual report) has been made available on the website. A hard copy of the financial documents or electronic copy could be sent to members upon request.* • *Allowing the entity to send an electronic copy either through email or ordinary mail. A hard copy of the financial documents could be sent to members upon request.*
The Institute of Accountants in Management	*Yes, the provisions should be amended along the lines as suggested in Para 5.4*
Canadian Certified General	*Yes*

Accountants Association of Hong Kong	
The Hong Kong Institute of Chartered Secretaries	*We agree that the summary financial report regime should be extended to all companies incorporated in Hong Kong except for those preparing simplified accounts under Section 141D of the CO.* *Given the increasing complexity of company accounts, more shareholders will consider receipt of summary financial reports sufficient for their purposes. It will save the operating costs of the companies if, as proposed, they are given the option to send to their members a hard copy of the financial documents or the summary financial report as they see fit instead of obtaining the prior consent from the shareholders for sending them a hard copy of the summary financial report as presently required under the CO. The proposed mechanism can simplify the administrative procedures of the companies while at the same time offer sufficient protection to the shareholders who will still have the right to ask for a hard copy of the financial documents under the new summary financial report regime.* *To ensure that the shareholders' information right will not be undermined under the proposed summary financial report regime, it is imperative that the summary financial reports should contain all the material information of the companies which are necessary for the shareholders to consider in deciding whether to continue their investment in the companies. It is our view that the summary financial report should include at least the balance sheet, profit and loss account, cash flow, change in equity, summary of business review, aggregate borrowings, collaterals given, change in share capital, outstanding options and whether the audit is qualified etc. We suggest the contents of the summary financial report should be contained in the Hong Kong Financial Reporting Standards ("HKFRS") instead of the CO as this facilitates the implementation of any subsequent changes.* *We have no objection to the proposal that a shareholder shall have the right to request the company not to send him a copy, whether hard or soft, of the financial documents or the summary financial report - a practice which is currently not allowed for listed companies in Hong Kong. Apart from being an international practice, we consider that it is also an environmental friendly practice which is worthy of support especially by shareholders of listed companies who have access to the electronic versions of the financial reports from the corporate websites of the companies or the website of the Stock Exchange. As regards the non-listed companies, we find this practice reasonable so long as the shareholders notify the companies of their waivers clearly in writing.* *We are also in support of the proposed amendment to the term "entitled persons" which shall cover "persons who would be entitled". This enables the company to obtain prior consent from potential shareholders during the IPO stage.*
CLP	*We support the proposal to amend the provisions regarding summary financial reports along the lines as suggested in paragraph 5.4 of the Consultation Paper. We believe all companies (other than those applying Section 141D of the Companies Ordinance) should be allowed to prepare summary financial reports and be given the choice of sending to their members a hard copy of the financial documents or the summary financial report insofar as the interests of the members are protected. Where a company has chosen to send its members a hard copy of the summary financial report instead of the financial documents, the members must be*

	given the option to request that the company sends them a hard copy of the financial documents free of charges. *In considering the form and contents of the summary financial reports, it is important to strike a balance between the demand for information which could be onerous in preparing summary financial reports and the need to provide adequate financial information for shareholders to make informed decision as to whether they should continue their investment in the companies. A summary financial report could include a summary directors' report, auditors' statement, financial statements, a summary business review and a summary corporate governance report.*
The Association of International Accountants	*Yes. The company shall be allowed to ascertain the preference of entitled persons to the form of the summary financial report received, either printed or electronic versions. New provisions should provide for distribution of the summary financial report by e-mail to the entitled persons' registered e-mail address.*

Hong Kong Institute of Certified Public Accountants	*We support the proposals in paragraph 5.4 as we consider that these offer a range of practical solutions to encourage the use of summary reports and will help provide information to shareholders that they find useful.*
	
	We recommend that a summary financial report include, as a minimum:
	• *the statement of recognised income and expense, or statement of changes in equity, as presented in the full financial statements;*
	• *the balance sheet as presented in the full financial statements;*
	• *the statement of cash flows, as presented in the full financial statements; and*
	• *a basis of preparation note, which would include, as a minimum:*
	    ➢ *an explanation of the basis of preparation of the summary financial statements; and*
	    ➢ *a statement setting out the extent of compliance of the source financial statements with the applicable accounting framework.*

Ernest & Young	*We agree with the proposed changes.*
HKEx	*I agree with the proposals to make summary reports more user-friendly and would concur that compliance with HKFRSs or IFRSs leads to substantially more information and complex financial statements. Some readers may prefer to be initially provided with less detailed summary financial statements but may also at the same time would like to be directed to where detailed information can be found, or to be provided with the full detailed financial statements on request.* *I note that the current proposal is that all companies, other than those applying section 141D, will be given the ability to provide their shareholders with summary financial reports. As accounting standards are constantly evolving it is possible that future disclosures required by companies applying section 141D may be significantly greater than that required in summary financial reports. It would therefore appear appropriate that such companies should also allow their shareholders to elect to receive summary financial reports or information that is useful to them. I would also suggest that all requests by shareholders should be*

	properly documented and be in writing.
CPA Australia	*We have no hesitation in supporting this proposed amendment because it can efficiently and effectively meet the various needs of the end-users, in particular the shareholders. Prima facie, this proposal enhances the accountability of the BOD to shareholders through timely reporting and avoids information overflow to some users.*
The Society of Chinese Accountants & Auditors	*We support this proposal. Reference can be made to IAS 34 and HKAS 34 Interim financial reporting.*
Hong Kong Bar Association	*The Bar agrees with this proposal. The contents of the summary financial reports for unlisted companies should however be consistent with their own disclosure obligations (see our comments on Question 4) as opposed to those designed for listed companies under the Companies (Summary Financial Report of List Companies) Regulations.*
The Chartered Institute of Management Accountants	• *For private company, the simplified account is good enough, thus no need for summary account* • *For listed company, this is a requirement in the listing rules*

Question 11 **Should auditors be given qualified privileges for statements made in the course of their duties as auditors and in respect of their resignation as auditors under the CO?** **IF YES, do you agree that the proposed privileges should be extended to persons who publish any document prepared by the auditors in the course of their duties as auditors and in respect of their resignation under the CO?**	
Robert Kenrick	*Yes*
Arthur Lam, Arthur Lam & Co. CPA	*We agree this recommendation fully.*
Paul Mok	*NO, qualified privileges for auditors need not be codified. There are already a number of defences to an action for defamation available to the auditors, including:* 1. *The words complained of are true in substance and in fact;* 2. *The statement constituted fair comment on a matter of public interest: that is, opinion which any person could honestly hold, based on facts known at the time; or* 3. *Qualified privileges in common law: the defence that a statement cannot be made the subject of an action for defamation because it was made on a privileged occasion and was not made maliciously, for an improper motive. The common law principles also cover fair and accurate reports of public meetings and various other public proceedings. [Toogood v Spring (1834); Adam v Ward (2003)]*
Victor Ho	*Yes. It is suggested that if auditors are given qualified privileged statements such statements free from malice and defamation should be lodged to relevant authorities including the Securities and Futures Commission (SFC), Commissioner of Inland Revenue (CIR) and other relevant government departments for necessary actions.*
KPMG	*We support the proposals, including the extension to those who publish any document prepared by the auditors in the course of their duties as auditors and in respect of their resignation under the CO.*
Respondent A	*Yes, we agree with the proposal.*
The Law Society of Hong Kong	*Yes.* *Agree.*
Deloitte Touche Tohmatsu	*We agree that auditors should be given qualified privileges for statements made in the course of their duties as auditors and in respect of their resignation as auditors under the CO.*
The Institute of	*Yes and agree*

Accountants in Management	
Canadian Certified General Accountants Association of Hong Kong	*Yes, it should be extended too.*
The Hong Kong Institute of Chartered Secretaries	*We support this proposal as this will enhance the protection given to auditors who act in good faith. This will also encourage auditors to disclose the true reasons for their resignation such that the public can more accurately appraise the situation and value of the companies concerned. Despite the sensitivity of such information and the impact which it may have on the market, it is unlikely that this privilege accorded to the auditors will be abused given their professional training.* *We agree that the privilege should extend to those who publish the documents prepared by the auditors such as the media.*
The Association of International Accountants	*Yes. However the proposed privilege should not be extended to persons who publish any document prepared by the auditors in the course of their duties as auditors and in respect of their resignation, as the privilege may be abused. A person who may be compelled to publish any document prepared by the auditor may seek permission of the company and the auditor who issues the document and, in certain cases, order of the Court.*
Hong Kong Institute of Certified Public Accountants	*We support the proposals given the increasingly important functions that auditors are required to perform on the corporate governance front. The new provision should ensure that auditors, will not, in the absence of malice on their part, be liable to any action for defamation at the suit of any person in respect of any oral or written statement which they make in the course of their duties as auditors and in respect of their resignation as auditors under the CO.*
Ernest & Young	*We agree with the proposed changes.*
HKEx	*I support the proposal together with the extension of the privilege to those who are directed to publish the statements made by the auditors, but only where such statements are made in the absence of malice.*

CPA Australia	*Auditors should be given qualified privileges for statements made in the course of their duties as auditors and in respect of their resignation as auditors under the CO. It is because the proposed reform will empower the auditors to submit any oral or written statement of which they consider so important that the matter concerned has to be brought to the shareholders' attention.* *An important point to consider is that the auditors, although engaged by the company (and approved by shareholders) are working on behalf of the shareholders to ensure that the directors reports present a true and fair picture of the current financial position of the company. This reform should also enable better communication between auditors and the BOD as it provides a platform and a stimulus for resolving differences of opinion between the auditor and the BOD.* *This reform will also enable auditors to better perform their duties without being concerned about potential duress or undue influence that might be placed on them by the BOD.* *However, we do not agree that the proposed privileges should be extended to persons who publish any document prepared by the auditors in the course of their duties or in respect of their resignation. Given that the auditors are solely responsible for the publication of the audit report including the collection, assembly and analysis of all relevant audit information the audit report needs to be viewed in its entirety rather than on one aspect which in itself may be significant but in the context of the entire audit report may be immaterial.*
The Society of Chinese Accountants & Auditors	*We support this proposal.*

Hong Kong Bar Association	*The Bar supports this proposal. We believe this is a long overdue provision. This is because auditors, who are independent of the management of the company, are usually the ones who have in-depth knowledge of the financial position of the company, as well any irregularities in the accounts as well as the conduct of the business of the company.* *In fact, both under the auditing standards[3], the CO[4] and the common law, the auditors are required to report irregularities of the accounts and fraud which came to their attention to the management, members and creditors of the company and, failing any action taken by the management, to the regulatory authorities and the shareholders at general meeting, see Sasea Finance Ltd (in lig) v. KPMG (a firm) [2000] 1 BCLC 236; Jackson & Powell on Professional Liability, 6th ed., para. 17-052. It is only right and fair that the auditors should be afforded with this qualified privilege to ensure that they can discharge their duties without any fear of suit from anyone, be it the directors, shareholders or the company.* *The Bar agrees that the qualified privilege should be extended to other "persons" if and so long as these persons are limited to say, the new auditors, the directors and managers of the company.*
The Chartered Institute of Management Accountants	*Auditors may put down their opinion in the auditor's reports and no separate statement is required. If they resign, they can request the listed company to include their statements with the announcement*

[3] For instance, Auditing Guidelines statement 3.271 issued in March 1991, paras. 12 to 18 deal with the duty of auditors in detecting and reporting fraud.

[4] S.140A.

Question 12 **Should the auditors' rights to information be enhanced so that they can require "specified persons", as mentioned in footnote 51, to provide them with information, explanations or other assistance as they think necessary for the performance of their duties as auditors?**	
The British Chamber of Commerce	*Definitely agreed.*
Robert Kenrick	*Yes*
Arthur Lam, Arthur Lam & Co. CPA	*We agree this recommendation fully.*
Paul Mok	*NO, there is no need. The existing provisions under S141(5) of the CO should suffice. The auditors will have all the information they require from the officers of the company, namely directors, managers and secretary, managers being someone under the immediate authority of the board of directors exercising managerial functions.* *If all employees are now required to provide any information and assistance to the auditors, the immediate results are that the employees will ask for insurance coverage and pay rises from the employers.* *It seems that neither the legislation in Singapore [S207(5) of Companies Act] nor Australia (S310 of Corporations Act 2001) extends the range of person from whom auditors can require information to the extent proposed in footnote 51. The proposal may wreak havoc in the companies being audited, causing confusion over accountability, chaos in setting priorities and breakdown in reporting channels.*
Victor Ho	*No comment*
KPMG	*We have serious reservations about broadening the category of persons who are compelled by law to provide any information that the auditors may consider they need to know as auditors. For example, we do not consider it appropriate that predecessor auditors should be compelled by law to provide all and any information to the incoming auditors may request, as incoming auditors are required to form their own opinions concerning the financial affairs of the company. In addition, the specified persons may include individuals who are not Hong Kong residents (and may never have been) raising jurisdictional concerns over the extent to which such individuals should be held to have committed an offence under Hong Kong law, simply by failing to comply with a request for information from a Hong Kong incorporated company or its auditors.* *We therefore consider that the question of auditors obtaining information from the broader group of specified persons identified in footnote 51 should be dealt with in the same manner as is proposed in paragraph 6.5. That is, such requests should be made through the company, and it will be the company (and every officer of it who is in default) who will commit an offence if they fail to take all steps reasonably open to them to obtain the information.*

Respondent A	*Yes, we agree with the proposal. We note that "specified persons" includes auditors of subsidiary undertakings. Therefore we recommend that consideration be given to ensure the provision is consistent with the HKICPA's Code of Ethics for Professional Accountants, and the relevant HKASs.*
ACCA	*We remain our position in our previous submission to the Standing Committee on Company Law Reform (SCCLR) in 2003 that this proposed requirement should provide for cases where an employee, with reasonable excuse, is not in a capacity to access to and therefore cannot provide certain information which the auditor thinks necessary for the purpose of the audit of the company's accounts. We consider it more appropriate for the directors to be held ultimately responsible for providing such information.*
The Law Society of Hong Kong	*Agree.*
Deloitte Touche Tohmatsu	*We agree with this proposal as it would improve the completeness and accuracy of information provided to auditors by persons not previously covered by the Companies Ordinance.*
The Institute of Accountants in Management	*Yes*
Canadian Certified General Accountants Association of Hong Kong	*Yes*
The Hong Kong Institute of Chartered Secretaries	*While we understand that this proposal can facilitate disclosure of information to the auditors, it is in our opinion excessive to make the default of producing to the auditors the requested information on the part of the "specified persons" an offence, given the fact that the auditors are always at liberty to qualify their opinions if they have any reservations about the accuracy or sufficiency of the information given to them.*
The Association of International Accountants	*Yes.*
Hong Kong Institute of Certified Public	*We have serious reservations about broadening the category of persons who are compelled by law to provide any information that the auditors may consider they need to know as auditors. For example, we do not consider it appropriate that predecessor auditors should be compelled by law to provide all and any information to the incoming auditors may request, as incoming auditors are required to form their own opinions concerning the financial affairs of the company. In addition, the specified persons may include*

Accountants	*individuals who are not Hong Kong residents (and may never have been), raising jurisdictional concerns over the extent to which such individuals should be held to have committed an offence under Hong Kong law, simply by failing to comply with a request for information from a Hong Kong incorporated company or its auditors.* *We therefore consider that the question of auditors obtaining information from the broader group of specified persons identified in footnote 51 should be dealt with in the same manner as is proposed in paragraph 6.5. That is, such requests should be made through the company, and it will be the company (and every officer of it who is in default) who will commit an offence if they fail to take all steps reasonably open to them to obtain the information.*
Ernest & Young	*We consider that the existing requirements in Section 141(5) of the Companies Ordinance whereby the auditor is entitled to explanations and information from officers of the company are adequate, and accordingly we do not see the need to extend the right of the auditor to obtain information from the specified persons in footnote 51.*
HKEx	*Although I support the proposal in principle, there may be circumstances where the "specified person" may have a conflicting obligation or may have restrictions on the timing or extent of co-operation that can be given. For example, where a partially owned subsidiary is a listed company, it will normally have an obligation to keep price sensitive information confidential until the release of an announcement to the general public so that all shareholders in the listed company are treated equally.*
CPA Australia	*We are of the opinion that the auditors' rights to information should be enhanced. The information, explanations or other assistance obtained from "specified persons", though mainly internally-generated, can provide additional evidence to the auditors to justify or form their audit opinion.* *This is extremely important given the malfeasance that occurred in the 1990s when companies such as Enron moved non-performing assets off balance sheets into subsidiaries or other vehicles effectively hiding them from auditors and shareholders. The extension of the auditor's rights to pursue information provides additional assurance to shareholders with respect to the published financial statements.*
The Society of Chinese Accountants & Auditors	*We have reservation on this proposal as the scope and definition of the "specified persons" have to be clearly defined.*

Association of Women Accountants (Hong Kong) Limited	*Different opinions were obtained on the auditors' rights to information be enhanced so that they can require "specified persons", as mentioned in footnote 51 of the Consultation Paper, to provide them with information, explanations or other assistance as they think necessary for the performance of their duties as auditors.* *Accountants in the auditing profession generally welcome new policies or regulations to enhance their right to relevant information in order to facilitate their audit work on the companies' accounts.* *However, other accountants consider that company directors are responsible for providing true and correct information to auditors for audit purpose and no other officers of the company although directors may delegate such authority. As the other officers may not be in the capacity to assess relevant information required by the auditors, there may be concerns as to reliability and correctness of such information or representation given.*
Hong Kong Bar Association	*The Bar supports this proposal.*
The Chartered Institute of Management Accountants	*Yes*

Question 13 **Where a holding company has a subsidiary undertaking which is not a body corporate incorporated in Hong Kong, should the auditor have the right to require the holding company to obtain from the relevant persons or parties such information, explanations or other assistance as the auditor may reasonably require for the purposes of his duties as auditor?**	
The British Chamber of Commerce	*Definitely agreed.*
Robert Kenrick	*Yes*
Arthur Lam, Arthur Lam & Co. CPA	*We agree this recommendation fully.*
Paul Mok	*YES, I agree. Such an approach accords with not only S500 of the UK Companies Act 2006 but also S207(6) of the Companies Act in Singapore and S323A of the Corporations Act 2001 in Australia.* *However, be mindful of the following difficulties:* *1. Legal problems may arise where the interest in the subsidiary undertaking is less than 100%; and* *2. The local laws of some countries may not allow providing the required information.*
Victor Ho	*No comment*
KPMG	*We support the proposals.*
Respondent A	*Yes, we agree with the proposal.*
ACCA	*We agree to the proposal in principle, but consider that there may be practical difficulties in enforcement especially for overseas subsidiaries.*
The Law Society of Hong Kong	*Agree.*
Deloitte Touche Tohmatsu	*We agree that where a holding company has a subsidiary undertaking which is not a body corporate incorporated in Hong Kong, the auditor should have the right to require the holding company to obtain from the relevant persons or parties such information, explanations or other assistance as the auditor may reasonably require for the purposes of his duties as auditor.*
The Institute of Accountants in Management	*Yes*
Canadian Certified General Accountants	*Yes*

Association of Hong Kong	
The Hong Kong Institute of Chartered Secretaries	*We agree with the proposal that the auditor may require the holding company to obtain the necessary information from its overseas subsidiary undertaking. It is reasonable and something which the holding company is in the position to do.*
The Association of International Accountants	*Yes.*
Hong Kong Institute of Certified Public Accountants	*We support the proposal that the auditor should have the right to require the holding company to obtain the information and the holding company and every officer of it who is in default will commit an offence if the holding company fails to take all steps reasonably available. However, the Working Group may need to be mindful of difficulties when:* • *the interest in the subsidiary undertaking is less than 100%, potentially leading to legal issues; or* • *the local laws of some countries do not permit the subsidiary undertaking to provide the required information.*
Ernest & Young	*We agree with the proposed changes. Appropriate consideration would however need to be given to any applicable laws in that other jurisdiction.*
HKEx	*I support the proposal in principle but would comment that there may be circumstances where there are conflicting rights or obligations as mentioned in my response to Question 12 above. I would also suggest that the provision should be phrased so that the auditor is provided assistance to enable him to directly and independently obtain and examine the originals of relevant audit evidence as information channelled through the holding company could be intentionally or unintentionally amended or corrupted.*
CPA Australia	*This proposal is accepted as proposed.*
The Society of Chinese Accountants & Auditors	*We support this proposal as the Companies Ordinance and the financial reporting standards have required most such companies to prepare consolidated financial statements. The auditor would then be in a position better to discharge his obligation under the Companies Ordinance.*
Hong Kong Bar Association	*The Bar supports this proposal. We consider that the right of auditor to require information should not be limited to subsidiary but also associated company which is not a body corporate incorporated in Hong Kong.*

The Chartered Institute of Management Accountants	• *Already so for listed company* • *For non-listed company, the auditors can qualify the reports without such info, thus not necessary*

The Chamber of Hong Kong Listed Companies *(Q12, 13)*	*While we support the notion that auditors be given relevant access to company information, we believe that the obligations of fulfilling such need should rest with company directors, or the sole proprietor or partners in the case of a partnership, especially when failure to do so amounts to an offence. We believe that employees of a company, managers and secretaries included, should not be subject to potential offence of this nature.*

Question 14	
Should an outgoing auditor be allowed to give the incoming auditor information that he became aware of in his capacity as auditor without seeking permission of the company?	
The British Chamber of Commerce	*Agreed; although we would usually expect as a matter of courtesy that permission would be sought first.*
Robert Kenrick	*Yes*
Arthur Lam, Arthur Lam & Co. CPA	*We agree this recommendation. Given the existing environment in the accounting professionism, this amendment shall help promote the accounting profession to be more answerable to up held the public expectation.*
Paul Mok	*NO, that is not necessary. I do not agree that, on retirement, resignation or removal, outgoing auditors should be relieved of the duty of confidentiality that they owe to their clients (or former clients) so as to enable them to disclose any matters to any actual or purposed successor auditors which they regard as material for them to be aware of.*
Victor Ho	*Yes. It is recommended that permission for giving information to the incoming auditor by the outgoing auditor from the company is not necessary. However, notification to the company in advance as a matter of courtesy is required.*
KPMG	*We support the proposals.*
Respondent A	*Yes, we agree with the proposal provided the qualified privileges as per Question 11 above are also granted to auditors.*
The Law Society of Hong Kong	*Yes but there should be some limit on the scope of information that can be passed on, for example, those relevant to the proper discharge of obligation by the incoming auditor and a requirement that the information passed on is disclosed to the company*
Deloitte Touche Tohmatsu	*We not agree with the proposal as in our opinion the current requirements dealing with outgoing auditors are sufficient. We believe this is important to maintain the profession's standard of client confidentiality. If a client does not provide their permission for the outgoing auditor to communicate with the proposed incoming auditor, this should raise a sufficient "red flag" to the proposed incoming auditor to consider in their client acceptance process. In addition, significant issues should have been communicated by the outgoing auditor to those charged with governance of the entity. The incoming auditor could request to review documents containing any such communications.*
The Institute of Accountants in Management	*Yes*
Canadian Certified General Accountants Association of Hong	*Yes, it seems that it has no difference from the current practice.*

Kong	
The Hong Kong Institute of Chartered Secretaries	*We agree with this proposal on the condition that the information is factual and verifiable. This can facilitate the discharge of duties by the incoming auditor.*
The Association of International Accountants	*Yes. The information may be important for the incoming auditor to formulate his risk management strategies.*
Hong Kong Institute of Certified Public Accountants	*We support this on the premise that this will ensure an effective and continuous oversight of any changes in the auditor of a company.*
Ernest & Young	*We agree with the proposed change.*
HKEx	*I would support the proposal so long as the incoming auditor has been properly and duly appointed by the company and he has evidence of such prior to releasing the information. This will ensure that a contractual obligation of confidentiality will apply to the incoming auditor which may not necessarily apply to a "prospective" incoming auditor.* *If it is decided that the release of information is permitted before the incoming auditor is duly appointed, the legislation should be clear as to what type of information can be released without the company's permission.*
The Society of Chinese Accountants & Auditors	*We support this proposal.*
Hong Kong Bar Association	*Subject to one point, the Bar supports this proposal and believes that this provision would further enhance the corporate governance of companies in Hong Kong.* *We note that the proposal, as it now stands, is intended to give a right to the outgoing auditors to provide the incoming auditors with information which came to the knowledge of the outgoing auditors. It seems that to ensure that useful information will not go un-noticed to the incoming auditors, the provision should be expanded in that:-* *(1) where the outgoing auditors became aware of information relating to possible fraud or irregularities in the accounts or the conduct of the business of the company, the outgoing auditors are obliged to provide such information to the incoming auditors; and* *(2) for information other than fraud and irregularities, the outgoing auditors have the right to provide such information to the incoming auditors.* *It is necessary to provide for costs incurred by the outgoing auditors in providing information to the incoming auditors, possibly to be paid by the company. It is also necessary to extend qualified privilege to provision of information by the outgoing auditors to the incoming auditors to ensure that the outgoing auditors can be fearless in providing useful information to the incoming auditors.*

The Chartered Institute of Management Accountants	*Yes*

Question 15 **Should all outgoing auditors (i.e. auditors who cease to hold office for any reasons) be required to provide a statement of any circumstances connected with his ceasing to hold office that he considers should be brought to the attention of the members or creditors of the company or a statement of no such circumstances?**	
The British Chamber of Commerce	*Agreed.*
Robert Kenrick	*Yes*
Arthur Lam, Arthur Lam & Co. CPA	*We think the auditors shall make this kind of statements <u>when it is needed</u>. If we make statements like this at all circumstances, a statement which is supposed to draw attention may be likely treated as standard letter. The result could be that the members and creditors receiving the messages may simply ignore the statements.*
Paul Mok	*NO, that will not be necessary.* *For resigning auditors, a communication channel has already been established under S140A(2)(a)(ii), which includes debenture holders as specified in S140A(3)(b).* *For auditors being removed, another communication channel can be found under S132(3), which apparently does not include debenture holders as recipients of the auditors' representations.* *I would agree that auditors being removed should have the right to make representations to not only the members but also the debenture holders of the company. The scope of the term "creditors" used in question 15 is too wide and too vague.*
Victor Ho	*No comment*
KPMG	*We support the proposals.*
Respondent A	*Yes, we agree with the proposal. We recommend that the circumstances to be reported should be consistent with the guidance provided in the HKICPA's Code of Ethics for Professional Accountants.*
The Law Society of Hong Kong	*Agree.*
Deloitte Touche Tohmatsu	*We agree that all outgoing auditors should be required to provide a statement of any circumstances connected with their ceasing to hold office that they consider should be brought to the attention of the members or creditors of the company or a statement of no such circumstances.* *In passing we would ask why this requirement includes some stakeholders as discussed in 6.1 and excludes others e.g. includes creditors but excludes regulators?*

The Institute of Accountants in Management	*Yes*
Canadian Certified General Accountants Association of Hong Kong	*Yes*
The Hong Kong Institute of Chartered Secretaries	*We agree that the requirement to make a statement of any circumstances connected with the ceasing of office should be extended from resigning auditors to all outgoing auditors. This is important to the shareholders in the sense that it helps them to be alert to any worrying signs or risks of the company at the earliest opportunity.*
Hong Kong Institute of Certified Public Accountants	*We support the proposal. This would extend the section 140A of the current CO whereby a resigning auditor is required to make a statement in the notice of resignation as to whether there are any circumstances or not in relation to his resignation that he considers should be brought to the notice of the members or creditors of the company.*
The Association of International Accountants	*Yes. However, new provisions should also be very clear in the event of the "incoming auditor" resigning as soon as he is made aware of the circumstances connected with the outgoing auditor ceasing to act. Suppose A is the outgoing (i.e. the resigning) auditor and B is the incoming auditor as referred to in para. 6.6 to 6.8 of the consultation paper, and if not long after his appointment, B becomes aware of further or more serious irregular transactions of which the company is a party (or some directors are parties) involved and the risk of continuing to act as the auditor is beyond his manageability. B also resigns, though he has not commenced any work. It is not clear from the Consultation Paper if B, the incoming auditor, will be afforded the same protections. This may be a hypothetical case, but its possibility cannot be ruled out.*
Ernest & Young	*We agree with the proposed change.*
HKEx	*I support the proposal. I also suggest that the timing of the cessation and the real substantive reasons for the cessation of office should be given rather than the typical reason given which is a disagreement on the audit fee. I would also note that a change in auditors soon after the company's financial year end is disruptive and may be lead to delays in finalization of audited financial statements.* *There should be clarity on what is meant by "ceasing to hold office". Normally, the term of office of an auditor is the period between two annual general meetings, but the position in less clear when a "casual vacancy" arises under the current section 131(5) of the Companies Ordinance. I would also suggest that section 131(9) should be revisited and reconsidered as it provides that a casual vacancy also arises when there has been a change in the partners of an audit firm before the audit firm's period of*

	appointment as auditor expires. In practice, audit firms would not normally take into account the annual general meeting dates of their clients when considering partnership changes and changes in partners would appear to trigger section 131(9).
The Society of Chinese Accountants & Auditors	*We support this proposal.*
Hong Kong Bar Association	*The Bar supports this proposal. Again, the qualified privilege should be extended to such disclosure.*
The Chartered Institute of Management Accountants	*Yes for listed company and to be included in the announcement*

The Chamber of Hong Kong Listed Companies *(Q14, 15)*	*In true spirit of transparency, we do not object to an outgoing auditor giving information to the incoming auditor, as stated in question 14, so long as the company itself is kept informed of the information so provided. This is to keep every party standing on an equal footing and the company could react immediately to avoid misrepresentation. By the same principle, we agree to the amendment proposed in question 15.*
CPA Australia *(Q14-15)*	*Both proposals (Questions 14 and 15) are accepted as proposed as they are in line with practices common in either other jurisdictions or with standards used by other professions such as Actuarial professional standards.* *In Australia out-going auditors are required to advise the regulator (ASIC) of their departure and to seek the regulator's approval. In addition, the auditor is required to advise the regulator of any reportable issues that the auditor's engagement company may be currently experiencing and out-going auditors have the right to make written representations to the members of the company and to address the general meeting. These requirements ensure that auditor independence can be maintained with shareholders having access to material information.* *Other professional bodies through their internal member standards, such as the Australian Institute of Actuaries, require outgoing appointed actuaries to answer questions from newly appointed actuaries or the regulator that maybe pertinent.*

Question 16 **Do you agree with the proposed amendments to the auditing provisions as set out in paragraph 6.9?**	
The British Chamber of Commerce	*All agreed, subject to materiality levels being applicable.*
Robert Kenrick	*Yes*
Arthur Lam, Arthur Lam & Co. CPA	*We consider the recommendation (a), (b), and (c) of paragraph 6.9 are constructive. But the recommendation relating to fixing auditors' remuneration is not. The members shall have the say on fixing the auditors' remuneration.*
Paul Mok	*6.9(a) I agree with the proposal to require the auditors to report on any inconsistencies between the audited accounts and financial information contained in other parts of the annual report, such as the directors' report. At the same time, the qualified privilege which an audit report normally enjoys should be extended to the auditors' comments on items of other financial information which appear to be inconsistent with the audited financial statements.* *It is noted that the recommendation is in line with S496 of the UK Companies Act 2006, while Singapore and Australia do not seem to have similar provision.* *6.9(b) If a directors' remuneration report is required to be prepared, I agree that auditors will be required to report on the auditable part of the report. This will be in accordance with S497 of the UK Companies Act 2006 for quoted companies.* *6.9(c) I agree with the proposal to clarify that an auditor's term of appointment ceases when a liquidator is appointed.* *6.9(d) I agree with the proposal to remove the existing requirement of fixing the auditors' remuneration by a company in a general meeting, and to allow the directors to fix the auditors' remuneration. This is what Hong Kong companies have been doing in reality. In practice, the amount of the auditors' remuneration for a year cannot be determined at the beginning of that year. This is because the auditors' remuneration for any given year varies with the scope and extent of the audit work to be undertaken in that year.*
Victor Ho	*No comment*
KPMG	*We support the proposals.*
Respondent A	*6.9(a): Yes, we agree with the proposal provided the responsibilities of auditors are consistent with the requirements set out in HKSA 720 Other Information in Documents Containing Audited Financial Statements.* *6.9(b): Yes, we agree in principle. However, there is currently no guidance for auditors in relation to reporting on a directors' remuneration report. We recommend the FSTB work closely with the HKICPA on this matter. See also the comments raised under Question 9 above.*

	6.9(c): Yes, we agree with the proposal. *6.9(d): Yes, we agree with the proposal.*
ACCA	*We do not agree to the proposal set out in paragraph 6.9(d) to remove the existing requirement of fixing the auditors' remuneration by a company in a general meeting, and allow directors to fix the auditors' remuneration. This is contradictory to enhancing corporate governance. We consider the existing requirement a best practice although we note that in reality, directors are generally empowered to fix the auditors' remuneration. Nonetheless, we consider that shareholders should be given such a right no matter whether they choose to exercise it or not.*
The Law Society of Hong Kong	*6.9(a): Agree. The auditor's confirmation will enhance the reliability of the directors' report.* *6.9(b): Disagree. Information contained in the directors' remuneration report are matters of fact, as opposed to opinion. No independent audit of such information should be required.* *6.9(c): Agree* *6.9(d): Agree*
Deloitte Touche Tohmatsu	*We comment as follows in respect of the lettered points set out in paragraph 6.9.* *6.9(a): We do not agree with the proposal as we believe the auditing requirements set out in HKSA 720 "Information in Documents Containing Audited Financial Statements" are sufficient to require the auditor to consider and report such inconsistencies between the audited financial statements and any other information, including the directors' report, in the annual report.* *6.9(b): We do not agree with the proposal that specific information in the directors' report should be auditable. In our opinion, the auditor's opinion should be restricted to the financial statements. If specific information is considered necessary to be audited, it should be considered to be included as a required disclosure in the financial statements.* *6.9(c): We agree with the proposal.* *6.9(d): We agree with the proposal.*
The Institute of Accountants in Management	*Yes, we agree with the proposed amendments to the auditing provisions as set out in Para 6.9.*
Canadian Certified General Accountants Association of Hong Kong	*(a), (b), (c) and (d) Yes*

The Hong Kong Institute of Chartered Secretaries	*We support the various recommendations as set out in paragraph 6.9 to improve the clarity and operation of the auditing provisions in the CO except 6.9(a) and 6.9(d). It is difficult for auditors to report on inconsistencies between the audited accounts and financial information contained in other parts of the annual report as it involves subjective judgment and interpretation, taking into account that analytical and forward-looking business review has been proposed to be included in the director's report. As auditors are accountable to the shareholders, we consider that the right to fix their remuneration should, as a matter of principle, be reserved for the shareholders to be exercisable in the general meetings though we understand that in practice, such right is always delegated to directors.*
The Association of International Accountants	*Yes. except (d). Giving the directors the power to fix the auditor's remuneration will act in jeopardy of the independence of the auditor, as an auditor may tend to have the motive to please the directors.*
Hong Kong Institute of Certified Public Accountants	*We support the proposals in paragraph 6.9 to improve the clarity and operation of the auditing provisions in the CO.*
Ernest & Young	*We do not agree with the proposed change in 6.9 (a). We foresee there being practical problems, for example, in defining "inconsistencies" and also the availability of the other information at the time that the directors have approved the financial statements and when the auditor's report is dated. Furthermore, in our view this area is already adequately dealt with by auditing standards and further statutory provision is not necessary.* *We do not agree with the proposed change in 6.9(b). In particular, we have concerns over the practical application of the requirement, for example, how to determine what is the "auditable part" and also the extent of the audit procedures that could reasonably be performed in order to determine completeness of such information.* *We agree with the proposed changes for 6.9(c) and (d).*
HKEx	*Paragraph 6.9 to the consultation paper makes a number of recommendations and I believe recommendation 6.9(d) should be reconsidered. It is proposed that auditors' remuneration be determined by the directors without referral to shareholders at a general meeting. I believe auditors have an important responsibility to report to the shareholders on the stewardship role of the directors and there should be greater transparency in the selection of auditors and determining their remuneration. Currently, under the Corporate Governance Code of the Listing Rules, the Audit Committee which should be independent of the executive directors of the company, is responsible for these matters and in the absence of an independent Audit Committee, it would appear that shareholders should continue to have an input on auditor matters. This would enhance and facilitate a check on the independence of the auditor to ensure that he acts primarily in the interests of the shareholders.*
CPA Australia	*This proposal is accepted as proposed.*
The Society of Chinese	*Yes, except for paragraph 6.9(d) as the general meeting can have a resolution to delegate such power to the directors.*

Accountants & Auditors	*In practice, the general meeting of most listed companies has delegated such power to the directors yet.*
Hong Kong Bar Association	*The Bar supports this proposal.*
The Chartered Institute of Management Accountants	*Yes*

CLP *(Q11-16)*	*We have no objection to the proposals as set out in Chapter 6 of the Consultation Paper.*

Question 17 **(a) Do you agree that the qualifying criteria for exemptions from certain accounting provisions for private companies under section 141D should be relaxed along the lines as suggested in paragraph 7.6?** **(b) Specifically, do you agree that the size criteria set out in paragraphs 7.3 and 7.6(e), i.e. (aggregate) total annual revenue, (aggregate) total assets and number of employees are the right criteria? IF YES, do you agree with the proposed thresholds?**	
The British Chamber of Commerce	*All agreed; but no need to set out the size criteria in the Companies Ordinance.*
Robert Kenrick	*(a) & (b) Yes* -
Arthur Lam, Arthur Lam & Co. CPA	***Regarding (a) above,*** *given the complexity of the "full GAAP" HKFRS, we agree application of section 141D shall be release to let more companies to choose a simpler reporting standard.* ***Regarding (b) above****, the recommendation is a good starting point. But the setting seems so wide, almost all unlisted companies may switch to section 141D reporting.*
Paul Mok	*(a) I agree.* *In particular, I am of the opinion that the proposal in paragraph 7.6(c) that a private company should be allowed to apply S141D and the SME-FRF & SME-FRS provided that the shareholders holding at least 75%, instead of 100%, in nominal value of the shares agree in writing and no shareholders object is reasonable, having considered that some important amendments, such as changing a company's name and amending a company's memorandum and articles of association, require only a majority of shareholders' votes.* *(b) I agree that the size criteria and the proposed thresholds are reasonable.* *I understand that the Inland Revenue had expressed concerns that the size criteria of $50M total revenue and $50M total assets were too high, since more than 80% of Hong Kong companies might satisfy the $50M total revenue test. However, I prefer taking a more liberal view and believe that the proposed size criteria are about just right. It is remembered that the UK has a turnover criterion of GBP 5.6M, which is more than HK$85M using the current exchange rate.* *As a side issue, while I understand that it is not uncommon for countries to specify the size criteria in their company laws, it may not be a convenient exercise to update these criteria in the future.*
Victor Ho	*(a) & (b) No comment* -

KPMG	*(a) We support the proposals.* *(b) We agree with the current size criteria, provided that private companies which exceed these criteria are permitted to opt-in to the SME reporting regime as proposed in paragraph 7.6(c).*
Respondent A	*(a) Yes, we agree with the proposal. We note that under paragraph 7.6(a) the exemption applies automatically for a "small company". We recommend that consideration be given to a provision ensuring shareholder protection should a certain percentage of shareholders object.* *(b) Yes, we agree with the proposal. However we note that the proposed definition of "small group" is based on the same size criteria and qualifying conditions for non-HK incorporated SMEs in the SME-FRF. Therefore we recommend that consideration be given to addressing the practical issues arising from subsequent changes from time to time of the SME-FRF criteria which could result in inconsistencies with the CO.*
ACCA	*In principle, we agree to the relaxation of the application of section 141D to small companies with predetermined criteria. However we have reservation on the adoption of the qualifying criteria based on the same size criteria and qualifying conditions in the Hong Kong SME-FRF and SME-FRS. In February 2007, the IASB released an Exposure Draft on the draft IFRS for SMEs. We are not certain how this will impact the financial reporting requirements of SMEs in Hong Kong. In particular, under the Exposure Draft, one major qualifying criterion is that the entity should have no public accountability. The definition of public accountability is however different in the HK SME-FRS as compared to the proposed IFRS for SMEs under which the scope is relatively wider.* *We consider that the way forward for the existing Hong Kong SME-FRF and SME-FRS is very critical in determining whether its qualifying criteria should be mandated in the legislation, as any subsequent amendments will be comparatively inflexible and require a lengthy period.*
The Law Society of Hong Kong	*(a) Agree but the criterion for determining whether or not an entity qualifies as "small group" should be properly considered with all relevant policy objectives addressed.* *(b) Unable to form a view without knowing the basis for formulating the criteria.*
Deloitte Touche Tohmatsu	*We agree with the following:* • *the relaxation of the qualifying criteria;* • *the size criteria; and* • *the proposed thresholds.*
The Institute of Accountants in Management	*(a) Yes* *(b) Yes and agree*
Canadian	*(a) and (b) Yes, but companies should* ***NOT*** *be divided into "Large" and "Small/Medium" by size thresholds in respect of audit*

Certified General Accountants Association of Hong Kong	*purposes. It should be based on "user-approach" as the accounts are audited for users.* <u>*(See section 1: Qualifying Criteria of Audit for SMEs)*</u> *"The purpose of audit is to provide users and stakeholders a high level of assurance to financial statements on whether they have complied with the regulated financial reporting framework, which should be set in a user-approach i.e. the disclosed financial information should satisfy the user group's needs but not overdoing it. The user group is mainly divided into two categories: internal and external users. Internal users include the employees, management and shareholders. As commonly known, the auditors' report is addressed to the shareholders, who are the capital providers and are often separated from the management in theory. They need the accredited financial report to assess the performance of management and the business they have invested. Employees and management also require an independent report on the financial position of the company to plan for the future or other purposes. External users of the financial information are widespread, but mainly the tax authority, banks, creditors, potential investors, etc. Different parties have different interest in the financial report.* *Unless external funds or credits are required, there are not many external users of the financial information for private companies except for the tax authority, which requires that the accounts are accurately stated for tax reporting purposes. A moderate level assurance report is sufficient as it is the responsibility of the management to report the tax liability to the tax authority. For other external users, they may either have no right to access the financial information of a private company without the permission of the management or the assurance is limited by the risk management clause incorporated in the auditors' report[5]. If there is a mutual need for the external users and the company, they can perform an audit on a voluntary basis, like that of some special audit or review reports[6]. That is the rationale that most developed countries (e.g. Canada, the USA, Australia, the UK and member states of EU etc) do not enforce an audit requirement for Small/Medium size companies ("SMEs"). However, the size varies from country to country, that confuses potential international users too. Moreover, the size needs to be changed from time to time to reflect the prevailing economic environment, for example, the UK has changed the qualifying size thresholds two times since it exempted the audit requirement for companies qualifying the criteria of "small" size. It is also inviting responses for increasing the threshold of the size again this year and further subdivides the size into small and medium for reporting purposes. Every time it needs to change the thresholds, it needs to go through the legislative process which is costly and time consuming.* *The proposals in the Consultation Paper recommends two sets of auditing standards ("Big GAAP" and "Small GAAP"), which confuse the public. Moreover, the "true and correct" view confuses international accountants as it has been abandoned for decades in many countries. While, it is emphasized that the audit procedures in accordance with Sec. 141D of the Companies Ordinance is no different from the ordinary audit except for the disclosures, the resulted differentiated report would create misunderstanding of the professionalism of the accounting profession.*

[5] The risk management clause explicitly disclaims the auditors' liability to other parties. It is normally stated in the auditors' report that "We (auditors) do not assume responsibility towards or accept liability to any other person for the contents of this report."

[6] E.g. agreed-upon engagement report, internal audit report etc.

	Therefore, CGA recommends that companies should be divided into three types (in respect to accounting and auditing provisions only) in accordance with the extent of the public interest in the company's affairs rather than their "size" as follows: ***Companies are divided into public interest or limited interest companies (or self-owned companies) where public interest companies are defined as*** *(a) Listed companies;* *(b) Companies authorized under the Banking Ordinance, and Insurance Ordinance or licensed under the Securities and Futures Ordinance;* *(c) Companies having more than 25 percent of the equity are owned by outsiders, where outsiders represent persons who are not the directors, officers, their family members or related parties;* *(d) "Large" non-profit making entities; and* *(e) Subsidiaries of the above companies.* *Companies not defined as public interest companies shall be defined as limited interest companies. Basically, limited interest companies are substantially (75 % or more than 75% of the equity) owned by the insiders who are the directors, officers, their family members and other related parties. For limited interest companies, statutory "financial reviews" should replace the statutory audit to save the cost burdens of SMEs.* *Financial review is a moderate level of assurance engagement and is popular in countries which exempt audit requirements for SMEs. It has well-established Standards in most developed countries, such as Canada and the USA. The advantages of replacing "statutory financial review" for "statutory audit" are:* *(a) it may retain one set of auditing standards, which give the general public a clear meaning of "audit";* *(b) it would not divide audit firms into two classes as two sets of auditing standards would result in small audit firms focusing on small audits. Consequently, they may lose the techniques of auditing larger sized companies.* *(c) it satisfies the limited users' needs, such as the tax authority and the management;* *(d) it saves the operation costs for SMEs as the costs of an review engagement is normally lower than an audit.* *While the audit requirements can be stringent enough to eliminate irregularities, the review requirements can be flexible enough to permit the expansion of legitimate activities for private companies. Certainly, the relevant sections of the Inland Revenue Ordinance should be amended so that a review or an audit is accepted for tax purposes.*
The Hong Kong Institute of Chartered Secretaries	*(a) We have no objection to the proposal of relaxing the qualifying criteria for exemptions from certain accounting provisions for private companies under Section 141D along the lines as suggested in paragraph 7.6.* *(b) We have no objection to the proposed size criteria and the thresholds.*

Mandatory Provident Fund Scheme Authority	*The Mandatory Provident Fund ("MPF") System is the mandatory retirement system for the workforce in Hong Kong. Employees and self-employed persons aged between 18 and 65 are required to join the MPF schemes.* *All MPF schemes are managed under the trusteeship of approved trustees.* *As MPF trustees are responsible for operating the MPF schemes which affect over 2 million MPF scheme members and have a high degree of public accountability, they are required to comply with stringent capital adequacy requirements (in terms of paid up share capital and net assets value) stipulated under the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) ("Regulation").* *For monitoring purposes, the Regulation requires the submission of full set of accounts together with auditor's report to the Authority for supervision compliance by approved trustees.* *As such, section 109(7) of the Regulation requires an approved trustee to lodge with the Authority for each financial period a copy of the balance sheet and profit and loss account of the company, a copy of the auditor's report and a copy of the directors' report, all of which must be prepared in accordance with the Companies Ordinance (Cap. 32).* *Currently, all MPF trustees can submit all the required documents to the Authority because the current section 141D of the Companies Ordinance prohibits group companies from preparing simplified accounts. If the qualifying criteria for exemptions from certain accounting provisions for private companies under section 141D of the Companies Ordinance are to be removed, it may be possible that an MPF trustee cannot provide a full set of accounts to the Authority in future.* *As such, we would suggest that approved trustees of MPF schemes be restricted from applying section 141D of the Companies Ordinance, just like the exclusion of banking, insurance, stock-broking and deposit-taking companies for public interest / regulatory reasons.*
The Association of International Accountants	*(a) Yes.* *(b) Yes. The proposed thresholds are about fine except in the case of 75% consent of shareholders of private companies, irrespective of size. We believe any company which falls within this category will have borrowings from banks and financial institutions. Such a relaxation is not meaningful if the companies are required under the loan agreements to submit audited accounts prepared in accordance with HKFRS.*
Hong Kong Institute of Certified Public Accountants	*(a) We agree that the qualifying criteria should be relaxed along the lines suggested in paragraph 7.6.* *(b) We agree.*
Ernest & Young	*(a) We agree with the proposed change.* *(b) We agree with the proposed change.*

HKEx	*I support the proposals set out in paragraph 7.6 subject to the following comments:-* *(a) I understand that there are separate proposals to remove "par value" shares. If this proceeds, the proposal concerning holders of 75 percent in the "nominal value" of shares agreeing to apply the relaxed requirements will be inoperable.* *(b) Regarding the proposed small company/group criteria of aggregate total annual revenue of not more than HKS50 million for a particular year, I believe that what is meant by "revenue" should be clarified. Should gains which do not arise in the ordinary course of business be excluded as these may be significant?*
CPA Australia	*Section 141D allows a private company, with the consent of all members in writing, to prepare simplified accounts with minimum disclosure requirements. This proposal to relax the qualifying criteria for exemptions from certain accounting provisions under section 141D is largely supported. All companies, other than other listed in Hong Kong Stock Exchange or certain private companies (such as a banking, insurance, etc.,) will then be able to prepare simplified annual accounts which in turn can significantly reduce the reporting cost.* *We also agree with the size criteria as set out in paragraphs 7.3 and 7.6(e) of the public consultation document.*
The Society of Chinese Accountants & Auditors	*We support this proposal to align with SME-FRS but further consideration should be given to the development of International Financial Reporting Standards for SME ("IFRS for SME") in the international arena. Even the consultation of IFRS for SME is still in progress, the International Accounting Standard Board has planned to release the final IFRS for SME in 2008. Hong Kong has to consider whether the final IFRS for SME would be adopted in Hong Kong. The current proposal in IFRS for SME is quite different from the current SME-FRS.*
Association of Women Accountants (Hong Kong) Limited	*It is considered to be appropriate that the qualifying criteria for exemptions from certain accounting provisions for private companies under section 141D shall be relaxed as proposed under paragraph 7.6 of the Consultation Paper. It is also suggested that such amendments shall be made effective as soon as possible so that the provisions under section 141D could be aligned with the SME-FRS.*
Hong Kong Bar Association	*(a) The Bar supports this proposal* *We note the proposal is based largely on the UK provisions (ss.246, 247, 247A, 248, 249, 249A of Companies Act 1985). At present, s.141D(1) stipulates better disclosure than its UK counterpart as there is no total audit exemption in Hong Kong.* *We agree that the qualifying criteria under s.141D should be relaxed along the lines suggested in paragraph 7.6(a), (b), (c), (d) and (f) of the Consultation Paper. In the case of paragraph 7.6(d), we understand the position to be (considered together with our comments on Question 3(a))that-* *(1) the holding company of a group of companies qualified as "small group" will not have to prepare its own accounts, while s.141D applies to the group accounts to be prepared by it; and* *(2) the accounts to be prepared by the intermediate holding company and the subsidiary will likewise be simplified version as*

	prescribed by s.141D. *(b) We note that the proposed criteria are adopted from the relevant UK provisions. The main difference between the UK scheme and the HK proposal is that the UK provides for the "balance sheet total" (essentially total assets, see s.247(5)) at half the value of turnover, whereas the HK proposal uses the same value for both turnover and assets*[7]*. As a HK company only needs to meet 2 out of the 3 stipulated criteria (turnover, assets and number of employees), this could mean that more companies (those with a higher total asset value but satisfy the turnover and employees requirements) may benefit from the exemption.* *Insofar as the proposed threshold is concerned, we note 2 differences. First, the threshold for "small company" is (even taking into account changes in exchange rate) higher in the UK than HK. Second, the UK legislation provides for another class of exempted companies known as "medium-sized companies" which are subject to more reporting requirements than "small companies" (but still less than would otherwise require), see s.246A of Companies Act 1985. In other words, many more companies in the UK can benefit from at least partial exemptions, while no such flexibility is allowed in HK. In this case, there may well be an argument for raising further the qualifying threshold so that more companies in HK can benefit from s.141D.*
Hong Kong General Chamber of Commerce	*While we support a simplified audit process for SMEs, we have observed a potential issue on the criteria for SME. The proposed definition is to set a threshold of HKS50 million turnover. While this is not uncommon in some circumstances where revenue is the main consideration (e.g. the Inland Revenue Department exempts small businesses with gross income not exceeding $500,000 from providing supporting documents when lodging tax return), for the purpose of understanding a business, such a threshold is over-simplistic. For instance, for the same turnover of HKS50 million, there could be a big difference in profit margin between a trading company and a consultancy firm. Likewise, a Hong Kong company may be small if its only turnover is dividend, say, not exceeding HKD1 million, but it may hold substantial investment in China in the form of Wholly Owned Foreign Enterprise (WOFEs). Such a narrowly-based definition to justify a Section 141D audit has given rise to the concern that a risk may be created for investors seeking to acquire genuine SMEs.* *Unless the purchaser appoints its own accountant to perform due diligence, the simplified audited account may be misleading and may create a risk for firms (especially smaller foreign firms) who wished to buy into a small company in Hong Kong. Given that Hong Kong is now a platform for holding investments in China, foreign investors are keen on buying equity interest in Hong Kong intermediate holding companies rather than buying the equity interest in China companies direct (due to the uncertainty of Mainland China's existing commercial law). Defining SMEs by turnover may be expedient, but this must be weighed against the potential impact arising from a reduced level of protection on investors.*

[7] Both the UK and HK approaches prescribe "gross" value (for both turnover and assets) for individual companies, and "net" (UK. gives also a "gross" value of 1.2 times "net" value) for groups of companies.

The Chartered Institute of Management Accountants	*(a) Yes* *(b) OK*

Question 18 **Should section 141D be amended to require a private company applying the section to prepare a full set of accounts dealing with the state of affairs and profit or loss of the company as required under the SME-FRS and, in the case of a holding company, also to prepare a full set of group accounts?**	
The British Chamber of Commerce	*Agreed.*
Robert Kenrick	*Yes*
Arthur Lam, Arthur Lam & Co. CPA	*No comment.*
Paul Mok	*I agree with the proposal. Otherwise, SMEs may be required, when applying for credit, to submit further information separately or prepare an extra set of accounts for presentation to banks to obtain finance. This may result in an increase in financial reporting costs.*
Victor Ho	*No comment*
KPMG	*We agree with the proposal. However, we consider that the exemptions from the preparation of group accounts should also be offered to SMEs if the conditions set out in paragraph 3.13 are met (subject to our comments above in response to question 3(b) concerning the conditions set out in paragraph 3.13).*
Respondent A	*Yes, we agree with the proposal. We believe the preparation of a full set of accounts is the rudiments of quality information. Given that the SME-FRS is already a tailor-made standard for small companies, we do not believe there shall be significant concern towards incremental compliance costs. In the case of a holding company, we note that the current SME-FRS does not cater for preparation of a full set of group accounts. Therefore consideration should be given to the development of SME-FRS for group accounts in conjunction with this proposal.* *Similar to our point raised in Question 17 above consideration needs to be given to the on going harmonisation of requirements proposed to be included in the CO which are based on current SME-FRF criteria which may change in the future.*
The Law Society of Hong Kong	*Agree. Private companies falling under section 141D are currently subject to SME-FRS. The amendment is a reflection of the reality.*
Deloitte Touche Tohmatsu	*We agree with the proposal to harmonise the requirements in S141D of the Companies Ordinance with the SME-FRS. Holding companies should be required to prepare consolidated financial statements to the extent that they do not fulfill any of the exemption*

	criteria set out in the Companies Ordinance.
The Institute of Accountants in Management	*Yes*
Canadian Certified General Accountants Association of Hong Kong	*When a company is qualified as "limited interest or self-owned companies", the company should be eligible to elect a statutory "review" to replace an "audit".*
The Hong Kong Institute of Chartered Secretaries	*We have no objection to this proposal.*
The Association of International Accountants	*Yes.*
Hong Kong Institute of Certified Public Accountants	*We support the proposal. We presume that the propose exemptions from the preparation of group accounts would apply to "section 141D companies" if the conditions set out in paragraph 3.13 are met.*
Ernest & Young	*We agree with the proposed change.*
HKEx	*The proposals included in this Question are that:-* *(a) companies that wish to apply section 141D must prepare a "full set" of financial statements prepared in accordance with the "Small and Medium-sized Entity Financial Reporting Standards" (SME-FRS); and* *(b) section 141D will be amended to require a holding company to prepare group accounts.* *Although I support the proposal I would note that the proposals are inconsistent with the proposals set out in Question 3 which deals with companies other than section 141D companies. The proposal appears to impose more onerous requirements for section 141D companies as Question 3 proposes that where a company prepares group accounts, it will not be required to prepare the accounts of the entity itself.* *My comments to Question 3 however, on whether a company should be required to prepare both the company's individual accounts*

	as well as those of the group where the company has subsidiaries are also applicable here. *I would also note that paragraph 1-1 of the SME-FRS states that "it does not apply to the preparation of consolidated financial statements" and the SME-FRS does not currently provide guidance on the preparation of "group accounts". It is therefore unclear under which accounting standards group accounts for a section 141D company will be prepared I understand that SME-FRS may be amended to deal with this.* *In due course, there should be explanations of whether the "true and correct" requirement under the current section 141D will be replaced by a "true and fair" requirement and if the current terminology is to be retained an explanation to clarify the differences between the two. Currently accounting and auditing standard setting bodies have specified where "true and fair" views can be given and take the view that it is to be restricted to financial statements" as specified in a relevant framework.* *Currently, there are a number of "frameworks", including International Accounting Standards issued by the International Accounting Standards Board ("IASB") and local domestic standards developed in jurisdictions such as Hong Kong, UK and USA. There should be consideration as to whether or not it is desirable to expand the acceptable frameworks in the legislation under which the financial statements may be prepared so that shareholders have a choice of what is most meaningful or relevant to them.*
CPA Australia	*This proposal is accepted on the grounds that it may resolve the inconsistency between the existing requirements as to the presentation of financial statements as well as auditors' opinion under section 141D and the HKFRS.* *Pursuant to section 141D(1)(e)(ii) the auditors' report shall state whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a "true and correct view" of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company. In addition, under paragraph 16 of the SME-FRF, compliance with the SME-FRF and SME-FRS is necessary in order for accounts to give a "true and correct view" when a company prepares its accounts in accordance with section 141D.* *In contrast, section 141 provides that the auditors' report shall, except in the case of a company that is entitled to avail itself, and has availed itself, of the benefit of any of the provisions of Part III of the Tenth Schedule, state whether in the auditors' opinion the company's balance sheet and profit and loss account and (if it is a holding company submitting group accounts) the group accounts have been properly prepared in accordance with the provisions of this Ordinance and whether in their opinion a true and fair view is given.* *Sections 122 and 123 requires the directors of a company to prepare a profit and loss account for each financial year, and a balance sheet as at the last day of that year. The accounts must give a "true and fair view" of the profit or loss and of the state of affairs of the company, and comply with the requirements of the Schedule. Sections 124 to 126 requires, where a company has a subsidiary at the end of its financial year, the directors of a company to prepare group accounts unless the company is, at the end of its financial year, a wholly owned subsidiary of another body corporate.* *Group accounts, which normally comprise a consolidated balance sheet and a consolidated profit and loss account, must give a "true and fair view" of the state of affairs and profit or loss of the company and its subsidiaries. In addition, paragraph 13 of*

	HKAS 1 "Presentation of Financial Statement" financial statements shall give a "true and fair view" of the financial position, financial performance and cash flows of an entity. *Although there is currently no statutory definition of a "true and correct view", it requires the faithful representation of the effects of transactions, other events and conditions in accordance with the definitions and recognition criteria for assets, liabilities, income and expenses set out in the Framework as suggested in paragraph 13 of HKAS 1.* *Taken as a whole, the proposed amendment will unify the presentation of the financial statements of companies, regardless of whether S141D is applied or not, and the auditors' opinion as to whether the financial statements give a "true and fair view" of the state of affairs of the company as at year end and of its profit or loss. Consequently, the end-users will more easily assess the financial information presented by the company and the auditors' opinion thereon.* *There is no dispute that the rewrite of the CO is essential to cope with the fast changing business environment in the 21st Century. The foregoing views, though inconclusive, may shed some lights on the fact that there remains room for further consideration, where appropriate, on the relevant legislative proposals.*
The Society of Chinese Accountants & Auditors	*We support the proposal to align with SME-FRS but further consideration should be given to the development of IFRS for SME in the international arena as discussed in our comments for Question 17.*
Hong Kong Bar Association	*The Bar supports this proposal. In the case of a holding company, we repeat our comments on Question 17(a). Presumably this means the group accounts to be prepared by the holding company will have to comply with SME-FRS (the holding company will not be required to prepare its own accounts).*
Hong Kong General Chamber of Commerce	*On the audit itself, although 141D requires a profit and loss account to be prepared and attached to its balance sheet, the auditors' report covers only the balance sheet and the accompanying notes, with no requirement for the auditors to report on the profit and loss account, which is relegated to "other information". Although the same procedure may be adopted, there is a difference in the extent of disclosure. Thus 141D gives an impression that it is not a traditional audit. This is reinforced by the "true and correct" rather than "true and fair" conclusion. Since there is no statutory definition of what is a "true and fair view" as against a "true and correct view", the equivalence or otherwise of 141D with traditional audit is an open issue which may lead to confusion. The SME may become the loser if additional audit (and hence additional cost) is necessitated by apparent inconsistency between audit report and financial information in other parts of the annual report. Such potential problems should be alleviated through more informed use of 141D, which would require more publicity on this and related aspects of the Companies Ordinance.*
The Chartered Institute of Management Accountants	*Yes, should all be synchronised*

Question 19	
Should "section 141D companies" be required to produce only simplified directors' reports along the lines of paragraph 7.9?	
The British Chamber of Commerce	*Agreed.*
Robert Kenrick	*Yes*
Arthur Lam, Arthur Lam & Co. CPA	*We agree to simpler directors' report requirements. We do not see the benefit to require private companies to report "equity-linked agreements" while many private companies would not have it at all. We think statements to disclose other type of conflicts of interests and directors' interests be more comprehensive.*
Paul Mok	*I welcome the laudable recommendation to require "S141D companies" to produce only simplified directors' reports. Regarding the statement to be included in the directors' report as to disclosure of information to auditors, please see my response to question 8.*
Victor Ho	*Yes. It is recommended that the amounts of fixed assets purchased and the donations paid should also be disclosed.*
KPMG	*We agree with the proposal. However, please note our comments above in response to question 8 with regard to the content of the proposed statement by directors concerning disclosure of information to auditors.*
Respondent A	*Yes, we agree with the proposal.*
The Law Society of Hong Kong	*Agree.*
Deloitte Touche Tohmatsu	*We agree that "section 141D companies" should be required to produce only simplified directors' reports along the lines of paragraph 7.9.*
The Institute of Accountants in Management	*Yes*
Canadian Certified General Accountants Association of Hong Kong	*Yes, but the simplified directors' report should be accompanied with a "reviewed account" instead of an audited account.*

The Hong Kong Institute of Chartered Secretaries	*We agree that the "section 141D companies" should be allowed to produce simplified directors' reports containing the information set out in paragraph 7.9. We suggest, however, that the amount recommended by the directors to be paid by way of dividend or a negative statement, should also be disclosed in the simplified directors' report.*
The Association of International Accountants	*Yes*
Hong Kong Institute of Certified Public Accountants	*We agree that "section 141D companies" should be permitted to produce a simplified directors' reports along the lines of paragraph 7.9.*
Ernest & Young	*We agree with the proposed change.*
HKEx	*I would support the proposal for simplifying the directors' reports of section 141D companies but would suggest that where there is a group the principal activities of the group should also be included which may be different from those of the company. In addition, the director's report should be inter-linked to the financial statements and the director's report should specifically cross-refer to them.*
The Chamber of Hong Kong Listed Companies	*We support a simplified directors' report format for l41D companies along the lines of paragraph 7.9 of the Consultation Paper, except the point about providing "particulars of any other matters that are material for the appreciation of the state of the company's affairs". We believe this point amounts to writing a business review and we do not believe this is necessary for 141D companies.*
The Society of Chinese Accountants & Auditors	*We support this proposal since it can better align with the objective of section 141D.*
Hong Kong Bar Association	*Subject to our comments on Question 4, we support this proposal.*
The Chartered Institute of Management Accountants	*Yes*

Question 20 **Do you agree that guarantee companies should be allowed to take advantage of the simplified reporting and disclosure requirements similar to those proposed to be applied to section 141D private companies (including simplified accounts and simplified directors' reports) if they are able to meet certain qualifying criteria?** **IF YES,** **(i) do you agree that the size criteria set out in paragraphs 7.3 and 7.6(e), i.e. (aggregate) total annual revenue, (aggregate) total assets and number of employees, are the right criteria for guarantee companies?** **(ii) should the thresholds outlined in paragraphs 7.3 and 7.6(e) be applied to guarantee companies or should they be modified?** **(iii) should any additional information be required from those guarantee companies which take advantage of the simplified reporting and disclosure requirements?**	
The British Chamber of Commerce	*Most guarantee companies are clubs or charities and should not be eligible for simplified accounts, since their members/the public (in the case of a charity) are less close to the management of the company.*
Robert Kenrick	*Yes* *(i) Yes* *(ii) The same thresholds should be applied.* *(iii) No*
Arthur Lam, Arthur Lam & Co. CPA	*Companies limited by guarantee may opt for a simpler accounts. Provisions similar to section 141D shall make available to those companies. However, the thresholds shall be lowered. We think more consultation works may be needed to avoid organizations feel unfairly treated.*
Paul Mok	*(i) & (ii) YES* *(iii) NIL*
Victor Ho	*No comment*
KPMG	*(i) & (ii) We agree that guarantee companies should be allowed to take advantage of the simplified reporting and disclosure requirements similar to those proposed to be applied to section 141D private companies.* *We consider that primary consideration for guarantee companies should be deciding which accounting framework more appropriately suits their circumstances.* *In this respect it should be noted that full HKFRSs, being a copy of IFRSs, have been developed primarily to assist investors and/or analysts in capital markets to assess the financial performance and future potential of companies*

	that have or are seeking to raise capital from those markets, in order to make investment decisions such as whether to buy or sell their interests in those entities. *In our view, such a framework is not designed to be adopted by companies limited by guarantee when these companies have been set-up for non-profit making purposes such educational, charitable, religious or community-related projects. It may also be an onerous burden on those companies to require them to employ or engage accountants with sufficient knowledge of HKTRSs to prepare their financial statements.* *By contrast, the SME framework is an historical cost framework, i.e. a framework which is backward-looking in its focus on recording the resources obtained by an entity and how management of entity has preserved or used those resources in their activities. In our view, it is therefore an appropriate basis for reporting, where assessment of the stewardship of management is the primary function of the financial statements It is therefore particularly suited to companies which have been set-up for non-profit making purposes such as educational, charitable, religious or community-related projects.* *Therefore in our view, all such guarantee companies should be permitted to prepare financial statements in accordance with the SME framework, irrespective of size as determined by the SME criteria.* *(iii) We would recommend that the HKICPA should be asked to consider developing additional disclosure guidelines for non-profit making organisations, in particular charities, which suit the needs of their stake-holders. We would not recommend including such requirements in the CO.*
Respondent A	*Yes, we agree with the proposal.* *(i) Yes, we agree with the proposal.* *(ii) Yes* *(iii) No*
ACCA	*We agree to the rationale that guarantee companies that are small in size should be allowed to take advantage of the simplified reporting and disclosure requirements. However, companies limited by guarantees can be of various types and natures, including both profit making and non profit making entities. Without adequate consideration of the nature of the guarantee companies, we consider it inappropriate to adopt a single set of criteria for the application of section 141D for all guarantee companies.*
The Law Society of Hong Kong	*Agree* *(i) Disagree. Guarantee companies are typically formed for non-profit making purposes. The consideration that has gone into fixing the criteria for assessing the SME status does not readily apply to non-profit making organizations. Annual revenue is not likely to be relevant in determining the suitability of the exemption. Different criteria should be formulated for guarantee companies with the relevant policy objectives taken into consideration.*

	(ii) For reason stated above, the criteria should be re-formulated. *(iii) No. If a guarantee company qualifies for the exemption by virtue of the re-formulated criteria, it should be placed on the same footing as a private company save that the obligation to file audited accounts at the Companies Registry should remain. The key should be getting the exemption criteria right.*
Deloitte Touche Tohmatsu	*We agree with the proposal.*
The Institute of Accountants in Management	*Yes,* *(i) Agree* *(ii) Yes* *(iii) No*
Canadian Certified General Accountants Association of Hong Kong	*(a), (b) and (c) It depends on the extent of public interest in the company. The size thresholds(turnover, assets or number of employees) seem appropriate to charities. Also, tax exempt charities should be subject to audit requirements. Again, statutory "Review" should replace "Audit" for those entities.*
The Hong Kong Institute of Chartered Secretaries	*We agree that guarantee companies which meet certain qualifying criteria i.e. those small in size should be allowed to take advantage of simplified reporting and disclosure requirements similar to those proposed for "section 141D companies". We have no comment on the proposed size criteria and thresholds for such guarantee companies.*
The Association of International Accountants	*Yes.* *(i) Not quite.* *(ii) The criteria can be lowered.* *(iii) None.*
Hong Kong Institute of Certified Public Accountants	*We consider that primary consideration for guarantee companies should be deciding which accounting framework more appropriately suits their circumstances.* *In this respect it should be noted that full HKFRSs have been developed primarily to assist investors and/or analysts in capital markets to assess the financial performance and future potential of companies that have or are seeking to raise capital from those markets, in order to make investment decisions such as whether to buy or sell their interests in those entities.* *In our view, such a framework is not designed to be adopted by companies limited by guarantee when these companies have been set-up for non-profit making purposes such as educational, charitable, religious or community related projects. It may also be an unnecessarily onerous burden on those companies to require them to employ or engage accountants with sufficient knowledge of*

	HKFRSs to prepare their financial statements. *By contrast, the SME framework is an historical cost framework, i.e. a framework which is backward-looking in its focus on recording the resources obtained by an entity and how management of entity has preserved or used those resources in their activities. In our view, it is an appropriate basis for reporting, where assessment of the stewardship of management is the primary function of the financial statements. It is therefore particularly suited to companies which have been set-up for non-profit making purposes such as educational, charitable, religious or community-related projects.* *Therefore, in our view, all such guarantee companies should be permitted to prepare financial statements in accordance with the SME framework, irrespective of size as determined by the SME criteria.*
Ernest & Young	*We agree with the proposed change.* *(i) to (iii) We agree with the proposed changes. For 20(iii), consideration should be given to providing additional disclosures for charities and not-for-profit organizations – given the public interest in such entities.*
HKEx	*I would support the proposals including the size criteria and the thresholds. Disclosure of the composition of management committees or senior management personnel may also be useful especially where there is no board of directors but a management committee comprised of volunteers which is commonly the case in charities. In addition, disclosure of the mission or objectives of the guarantee company would be useful as many are not-for-profit organizations.*
The Chamber of Hong Kong Listed Companies	*We agree that guarantee companies should follow the simplified reporting and disclosure requirements similar to those proposed to be applied to section 141D private companies. We agree to sub-point (i) and (ii) but not (iii). We do not think any additional information is necessary in this case.*
The Society of Chinese Accountants & Auditors	*We support this proposal as there is no reason to avoid the guarantee company to have a similar exemption imposed by section 141D.*
Hong Kong Bar Association	*The Bar supports this proposal. It appears to us that the purpose to which companies limited by guarantee and that limited by shares is put is not a valid distinction for the purpose of denying the former the benefit of simplified reporting and disclosure requirements. However we recognize that the criteria laid down in s.141D may not be apt or applicable in every respect to companies limited by guarantee, so while we agree in principle that simplified reporting requirements should similarly apply to companies limited by guarantee, we do not think it is appropriate to so provide within the framework of s.141D. Nor do we think the qualifying criteria in s.141D or the new proposal on "small companies" should necessarily be adopted in the case of companies limited by guarantee.*

The Chartered Institute of Management Accountants	*Yes, same criteria as 7.3* *(i) Yes* *(ii) Yes* *(iii) Yes- if they do not fit into the size criteria under 7.3 and 7.6*

CLP *(Q17 to 20)*	*Save for our comments on the contents of the proposed simplified directors' report, which are set out below, we have no objection to the proposals as set out in Chapter 7 of the Consultation Paper. For similar reasons set out in response to Question 8 above, a simplified directors' report should not contain a statement as to disclosure of information to auditors. We would also suggest a simplified directors' report should also include the amount of dividend recommended by directors for distribution to shareholders, and if no dividend is recommended, a negative statement to that effect should be included.* *We have no comments on the proposed size criteria and thresholds to be applied to guarantee companies.*
CPA Australia *(Q19-20)*	*These proposals are accepted as proposed as they are consistent with the proposals outlined for private companies.*

Question 21 **(a) Among the three options listed in paragraph 8.2, which option do you favour? What are the reasons for your choice?** **(b) If Option (3) is chosen, do you also favour giving statutory recognition to the HKFRSs by requiring companies to state in their accounts as to whether the accounts have been prepared in accordance with applicable accounting standards, and particulars of any material departure from those standards and the reasons?** **(c) If you do not favour any of the three options, do you have any other suggestion for dealing with possible conflicts between the Tenth Schedule and accounting standards?**	
The British Chamber of Commerce	*At present the Tenth Schedule to the Companies Ordinance sets out the required disclosures in the Balance Sheet and Profit and Loss account- it was first added to the Ordinance in 1974; and nowadays it does not reflect current Accounting Standards, and is significantly out-of-date.* *Of the three options in Para 8.2, we prefer Option 3 - retain a few disclosure requirements in the Tenth schedule which are not presently covered by Hong Kong financial reporting standards but which contain significant public interest or corporate governance dimensions. Companies must continue to follow the overriding principle that their accounts disclose a true and fair view of their state of affairs.* *Option 3 plus (b) above.*
Robert Kenrick	*(a) Option (3), because it is the simplest option. I agree with the Working Group that the existing Tenth Schedule is anachronistic. The establishment of an independent accounting standards board as in Australia would involve additional expense not warranted now that Hong Kong has adopted IFRS.* *(b) Yes. I believe that this is necessary for Option (3) to be effective.*
Paul Mok	*(a) I favour Option (3).* *Accounting standards are meant to provide authoritative but not mandatory guidance on the interpretation of what constitutes a true and fair view. The overriding principle for companies to follow is that their accounts must give a true and fair view of their state of affairs. Accounting standards are the means, not the end. It is wrong, at least in the environment of Hong Kong, to follow a rule-based principle in codifying accounting requirements into law. It is important that the option we choose take away the detailed accounting requirements from the Companies Ordinance and at the same time reinforce the overriding principle of the true and fair view.* *(b) S296 of the Australia Corporations Act 2001 states that the financial report for a financial year must comply with the accounting standards.* *S201 of the Singapore Companies Act states that a company's accounts shall comply with the requirements of the accounting standards and give a true and fair view of their state of affairs.*

	S393 of the UK Companies Act 2006 simply requires accounts to give a true and fair view. *Some countries have chosen to give accounting standards statutory backing or recognition, while some have not. Being a member of the HKICPA, it would be easy for me to agree to giving statutory recognition to the HKFRSs – the status of the HKICPA, and its members, would in a way be raised; however, we should guard against taking this step because:* *1. Hong Kong has been doing fine under a principle-based common law regime; there is no need to change.* *2. Accounting is an art, where good judgements count. Giving statutory recognition to accounting standards may encourage a mechanical compliance-driven approach, which may have insidious effects on the accounting profession in the long run.* *3. There is no need to give accounting standards statutory backing or recognition because the true and fair view requirement under S123 and S126 of the Companies Ordinance already have the effect of requiring companies to prepare accounts in accordance with generally accepted accounting standards in Hong Kong.* *4. Hong Kong courts already treat compliance with generally accepted accounting principles as prima facie evidence that the accounts in question give a true and fair view.* *5. Some countries have encountered cases of abuse relating to "true and fair view override". In Hong Kong, similar cases of abuse are not common; at least there are no statistics or evidence to the contrary.*
Arthur Lam, Arthur Lam & Co. CPA	*We opt for* ***option (2) of paragraph 8.2****. A parallel requirements may produce the best of both worlds: giving the public more confidence (the Government takes its role to monitor financial reporting) and providing the prompt update for the usefulness of financial statements (through time to time updates by the HKICPA).*
Victor Ho	*(a) Yes. 1 am in favor of Option 2 as given in Paragraph 8.2 because of <u>harmonization</u> with those updating provisions of HKFRS in the Tenth Schedule should be replaced <u>in the first place</u>.* *(b) No comment*
KPMG	*(a) We would support option 3, as we fully agree with the discussion in paragraph 8.3 concerning the difficulties that could arise of HKFRSs were given legal backing beyond the existing requirement for the financial statements to give a true and fair view.* *(b) We note that it is already a requirement in HKFRSs to make such a disclosure as is proposed in paragraph 8.6. Nevertheless, we would support repeating the requirement in the CO as we believe that such a statutory recognition of the importance of accounting standards may help achieve the purposes set out in paragraph 8.6.* *(c) As noted, we support option 3.*
Respondent A	*(a) We support Option 3. Option 3 provides the most efficient and effective way forward in delineating the respective roles of the Tenth Schedule and the accounting standards, in meeting the stakeholders' information needs.* *(b) Yes, we support giving statutory recognition to HKFRS if option 3 is selected. We would also suggest that this recognition be accorded to International Financial Reporting Standards (or similar GAAPs). We believe this will provide the necessary*

	regulatory touch in emphasizing the importance of compliance to the preparers and their stewards, thereby enhancing the quality of information flowing to the users. *(c) Not applicable.*
ACCA	*(a) & (b) We agree to option (3), namely retaining a few disclosure requirements in the Tenth Schedule which are not presently covered by the HKFRSs but with a significant public interest or corporate governance dimension and repealing the rest of the Schedule.* *However, we consider that statutory recognition should not only be given to HKFRSs, but also IFRSs as Hong Kong is an international financial centre with a number of multinationals listed and operated here. In addition, where the Listing Rules require listed companies to follow the disclosure requirements under the Tenth Schedule, it now allows these companies to adopt IFRSs. As such, the proposal that requires these companies to prepare their accounts based on HKFRSs only is moving in the opposition direction, and will definitely impose additional costs for these companies, which is again contradictory to the objective of this CO Rewrite project. We suggest that companies can prepare accounts based on IFRSs, although a reconciliation of material departures from HKFRSs can be considered.*
The Law Society of Hong Kong	*(a) Option (3) is the preferred one for the reasons given in paragraphs 8.3 and 8.4 of the consultation paper.* *(b) Yes.* *(c) Not applicable.*
Deloitte Touche Tohmatsu	*(a) We would choose option (3) for the reasons set out in the Consultation Paper. This option provides sufficient flexibility to enable the Companies Ordinance to remain consistent with accounting standards while including specific additional disclosures that are deemed necessary for local requirements.* *(b) We are in favour of giving statutory recognition to the HKFRSs in the way proposed. The Working Group should consider including in the Companies Ordinance a specific statement that, in the absence of very unusual circumstances, compliance with the accounting standards issued by the HKICPA would result in a "true and fair" view of the company. As noted in the Consultation Paper, the details of such unusual circumstances should be required to be disclosed by the directors.*
The Institute of Accountants in Management	*(a) Option 3 with same reasons as stated in Para 8.5* *(b) Yes* *(c) N/A*
Canadian Certified General Accountants	*Option 3 is closed to our suggestion in Section 1. However, CGA opines that the legislation may regulate the contents of the directors' report while the standards setting should be vested in the FRSC and AASC as aforesaid.*

Association of Hong Kong	
The Hong Kong Institute of Chartered Secretaries	*(a) We are in support of Option 3 as it avoids any potential conflicts between the Tenth Schedule of the CO and the HKFRS.* *(b) We prefer maintaining the non-statutory status of the HKFRS to giving it statutory backing. Accounting standards are evolving constantly and it will be easier to make changes thereto if they remain non-statutory.* *(c) We have no further suggestion.*
CLP	*(a) Among the three options, we are in favour of option 3 as it seems to be able to avoid potential conflicts between the Tenth Schedule and the HKFRS.* *(b) The HKFRS contains both measurement criteria as well as disclosure obligations and it would be inappropriate to enshrine measurement criteria in statute law. HKFRS, with statutory recognition, may become too prescriptive and restrict the flexibility of the accounting profession to exercise professional judgement. Therefore, it is appropriate to maintain the non-statutory status of the HKFRS so that it will be easier to make changes to the accounting standards which are constantly evolving, particularly with the fall convergence of the HKFRS with the IFRS.*
The Association of International Accountants	*(a) Option 3. Our choice is made for one main reason - that business world is very dynamic and fast changing. Accounting Standards have to be revised, and can be revised, very frequently to cope with the changes. But not so with amendments to the legislation. Therefore, it may be adequate for the law to state the overriding principles, e.g. that accounts of companies must give a true and fair view of their state of affairs, and the accounts must be prepared in accordance with the applicable accounting standards and financial reporting standards issued by the HKICPA. After all, HKICPA is a statutory organization and has now gained very high reputation as a professional body in the business communities worldwide.* *(b) Yes. If the CO only states the overriding principles as discussed in Q21(a) above, the instances of any inconsistencies between the requirements of CO and the accounting standards will be reduced to an absolute minimum.*
Hong Kong Institute of Certified Public Accountants	*(a) We consider Option (3) more appropriate as it will retain a few of the disclosure requirements in the Tenth Schedule which are not presently covered by the HKFRSs but with a significant public interest or corporate governance dimension (e.g. auditors' remuneration) and repeal the rest of the Schedule. Companies are required to continue to follow the overriding principle that their accounts must give a true and fair view of their state of affairs.* *(b) We favour this form of statutory recognition of HKFRSs. This may however beg the question on the status of those financial statements prepared using other financial reporting frameworks like IFRSs.* *(c) Not applicable.*
Ernest & Young	*(a) Option 3* *(b) We are in favour of the above approach. However, clarification should be considered as to whether financial statements*

	prepared in accordance with IFRS will also be deemed to be applicable accounting standards. *(c) n/a*
HKEx	*I support the revamp or complete removal of the Tenth Schedule to the Companies Ordinance as having financial disclosure requirements codified in legislation is too rigid and inflexible.* *Of the options suggested, my preference would be for option 3 which would keep the legislation as simple as possible.* *Consideration should also be given to whether it is appropriate or possible to explain the meaning of "true and fair" view, as it relates to compliance with the Companies Ordinance as distinct from accounting standards, given that it is regarded as an overriding principle. The term is dynamic and would change over time but needs to be so as expectations of shareholders and investors are constantly evolving. Including some guiding principles would be helpful especially where compliance with disclosure requirements in the Tenth Schedule or accounting standards does not necessarily mean that the financial statements are a true and fair.* *Although I would support statutory recognition of HKFRSs consideration should also be given to whether other internationally accepted and understood accounting standards such as those promulgated by the IASB should also be covered. This will allow shareholders to choose those standards which are relevant to them and this may also encourage businesses to incorporate in Hong Kong rather than elsewhere.* *The financial statements should be required to disclose which accounting standards have been applied, and to apply them consistently.*
Association of Women Accountants (Hong Kong) Limited	*Among the three options listed in paragraph 8.2 of the Consultation Paper, it is considered that Option 3 of retaining a few disclosure requirements in the Tenth Schedule which are not presently covered by the HKFRS may be the solution. In that case, overlapped requirements would be eliminated and conflicting issues arisen from any future amendments on HKFRS and Hong Kong Accounting Standards ("HKAS") so as to align with the international practice would be minimized.*
Hong Kong Bar Association	*The Bar supports Option (3) in paragraph 8.2 of the Consultation Paper. We agree it is undesirable to enshrine evolving accounting standards in statutory form, and we consider that the current requirement of "true and fair view", backed by the accounting standards (which themselves should have some statutory backing), provides for the necessary flexibility. We also agree that the inconsistencies between the Tenth Schedule and the HKFRSs should be removed.*

The Society of Chinese Accountants & Auditors	*We support the option (3) since it can avoid the overlapped between the Companies Ordinance and the financial reporting standards on one hand. On the other hand. it can retain flexibility for the financial reporting standards to align with the international practices without amending the Companies Ordinance.* *In addition, we suggest that we should consider whether IFRSs should also be regarded as one of the ways to comply with the requirements of the Companies Ordinance. Based on a legal advice sourced by the Hong Kong Institute of Certified Public Accountants, the companies incorporated under the Companies Ordinance must prepare their financial statements in accordance with HKFRSs in order to achieve the true and fair view required by the Companies Ordinance. Those financial statements prepared under IFRSs cannot achieve the same.* *In Hong Kong, companies incorporated outside Hong Kong and listed in the Hong Kong Stock Exchange can prepare their financial statements in accordance with IFRSs. While Europe, United States and other countries have begun or proposed to accept these companies listed in their markets to have the same set of financial statements without reconciliation, these companies would only be required to prepare one set of financial statements for dual or triple listing. However, an Hong Kong incorporated company if also listed in these countries may still be required to have 2 set of financial statements (prepared under both HKFRSs and IFRSs) in order to fulfill the same dual or triple listing requirements. This not only add additional compliance cost to those Hong Kong incorporated companies, but also create an unlevel playing field for them. In consequence, some companies may choose to incorporate a company outside Hong Kong for listing purpose in order to reduce their cost of compliance.* *In order to avoid the above situation, we may be required to consider the implication and, if necessary, to have some remedy on it.*
The Chartered Institute of Management Accountants	*(a) Option 3* *(b) Yes*

Question 22 **(a) Do you agree that the Eleventh Schedule in its present form should be repealed while retaining those disclosure requirements concerning section 141D companies with a significant public interest or corporate governance dimension and which are not presently covered by the SME-FRS?** **(b) IF YES, do you agree that statutory recognition should be given to the SME-FRS by requiring section 141D companies to state in their accounts as to whether the accounts have been prepared in accordance with applicable accounting standards, and particulars of any material departure from those standards and the reasons?** **(c) IF NOT, do you have any other suggestion for dealing with possible conflicts between the Eleventh Schedule and the SME-FRS?**	
The British Chamber of Commerce	*(a) Agreed.* *(b) No need for statutory recognition for SME FRS* *(c) The Eleventh Schedule will mostly be repealed.*
Robert Kenrick	*(a) Yes* *(b) Yes*
Arthur Lam, Arthur Lam & Co. CPA	*We think the Eleventh Schedule shall not be repealed. Please refer to our comments to Question 22. We do not feel there is any material conflicts between the Eleventh Schedule and the SME-FRS.*
Paul Mok	*(a) Yes* *(b) NO, please see 21(B).*
Victor Ho	*No comment*
KPMG	*(a) We agree with the proposal.* *(b) We support this proposal for the same reasons as explained in our answer to question 21(b).* *(c) As noted above, we support the above proposal.*
Respondent A	*(a) Yes, we agree with the proposal.* *(b) Yes, we agree for similar reasons provided in our response to Question 21(b) above.* *(c) Not applicable*
The Law Society of Hong Kong	*(a) Agree* *(b) Option (3) is the preferred one for the reasons given in paragraphs 8.3 and 8.4 of the consultation paper.* *(c) Not applicable.*

Deloitte Touche Tohmatsu	*(a) We agree with the proposal.* *(b) We agree with the proposal.*
The Hong Kong Institute of Chartered Secretaries	*(a) We are in support of the proposal as it avoids any possible conflicts between Eleventh Schedule of the CO and the SME-FRS.* *(b) We prefer maintaining the non-statutory status of the SME-FRS to giving it statutory backing. It will be easier to make changes thereto if they remain non-statutory.* *(c) We have no further suggestion.*
CLP	*(a) We support the proposal that the Eleventh Schedule in its present form be repealed while retaining those disclosure requirements concerning Section 141D companies with a significant public interest or corporate governance dimension and which are not presently covered by the SME-FRS.* *(b) We believe it is appropriate to keep the non-statutory status of SME-FRS for similar reasons set out in response to Question 21(b) above.*
The Association of International Accountants	*(a) Yes* *(b) Yes. Similarly with 21(b).*
ACCA	*We agree in principle to the way of dealing with the existing Eleventh Schedule. We also agree that statutory recognition could be given to the Hong Kong SME-FRS for the local compliance purpose provided that concerns as mentioned under Question 17 regarding qualifying criteria of section 141D are resolved.*
The Institute of Accountants in Management	*(a) Yes* *(b) Agree* *(c) N/A*
Canadian Certified General Accountants Association of Hong Kong	*Sec 141D and Eleventh Schedule should be repealed entirely. The law should be amended to replace "statutory Review" for "Audit. The Review Standards should be set by the FRSC and AASC taken reference to the international standards.*

Hong Kong Institute of Certified Public Accountants	*(a) We agree.* *(b) We agree. However, similar to Question 21(b) above, this may beg the question on the status of those financial statements prepared using other financial reporting frameworks like the IASB's IFRSs for SMEs if it is issued in Hong Kong after the exposure draft stage.* *(c) Not applicable.*
Ernest & Young	*(a) We agree with the proposed change.* *(b) We agree with the proposed changes. However, clarification should be considered as to whether financial statements prepared in accordance with the proposed IFRS SME-FRS will also be deemed to be applicable accounting standards.* *(c) n/a*
HKEx	*I concur with the removal of the Eleventh Schedule to the Companies Ordinance but similar to my comments to Question 21 above, I believe that statutory recognition should not only be given to those promulgated in Hong Kong. Those that are issued by the IASB should be allowed as such standards are required to go through a rigorous international due process of consultation before their release.* *I would also comment that currently SME-FRS is primarily directed at "for-profit" companies. However, in the case of companies limited by guarantee, many are charities which currently prepare an income and expenditure account rather than a profit and loss account. Useful information for these entities is the source of income and expenditure by project as donations are sometimes granted for specified or restricted uses.* *The financial statements of such entities thus attempt to show to their donors the use and management of donated funds. Before mandating SME-FRS for guarantee companies it may be useful to further explore the needs of the users and whether a different accounting framework could or should be used.*
The Society of Chinese Accountants & Auditors	*We support this proposal.*
Hong Kong Bar Association	*For the same reasons as above, the Bar supports the proposal set out in paragraph 8.7 of the Consultation Paper. We also agree that statutory recognition should be given to the SME-FRS as in the case of the HKFRSs.*
The Chartered Institute of Management Accountants	*(a) Yes* *(b) Yes*

CPA Australia (Q21-22)	*Among the three options listed in paragraph 8.2, option 3 is the preferred option. It is also agreed that the Eleventh Schedule in its present form should be repealed whist retaining those disclosure requirements concerning section 141D companies with a significant public interest or corporate governance dimension and which are not presently covered by the SME-FRS.* *In support of our recommendation, it is felt that giving statutory recognition to the HKFRSs by requiring companies to state in their accounts as to whether the accounts have been prepared in accordance with applicable accounting standards, and particulars of any material departure from those standards and the reasons will give companies the flexibility to comply with HKFRS. If there are particular aspects of HKFRS that the company does not want to comply with or wants to report in a different way, it will then be required to state the reasons for that departure. This will enable users of the financial reports to have confidence in the sections reported under the requirements of HKFRS and to focus on those areas which do not comply with the standards to understand the reasons for that departure.*

Other Relevant Comments Published in Newspaper	
Hong Kong Economic Journal (3 July 2007) by Mandy TAM Heung-man	談會計 宜按公眾利益決定披露要求 政府重寫《公司條例》的首階段公眾諮詢期已於上周末結束。綜觀整份諮詢文件，政府清晰地表達了重寫《公司條例》的方向，就是把香港的企業，按其資產、營業額的規模和僱員人數，分爲大型企業和中小企業，並因應企業規模而實施不同的資料披露要求。 政府的政策方向，明顯是配合香港會計師公會於二〇〇五年發出的「中小型企業會計準則」。但是，若《公司條例》確實跟隨這個方向發展下去，可能會衍生一系列的問題。 首先，政府主張《公司條例》內載有對企業的資料披露要求和財務滙報方面的技術標準；而同樣類似的要求和標準，同時亦載於由香港會計師公會發出的香港會計準則，以及由香港交易及結算所發出的上市規則之中。結果，條文重複。 應刪除重疊條文 條文重疊造成最大的問題是，香港會計準則和上市規則會因應國際間的趨勢，不時作出修訂，比政府修訂《公司條例》來得頻密會計準則或上市規則與法例不同步，就可能出現不能兼容，甚至互相矛盾的地方。 舉例，二〇〇五年香港會計師公會發出「中小型企業會計準則」後，《公司條例》並未有作出相應的修訂。有部分會計師反映，現在的《公司條例》中對中小企業的披露要求，並未有配合香港會計師公會的中小型企業會計準則，結果使有關的法例條文失去了意義。 舉例，新的中小型企業會計準則向中小企施加的披露要求，已經比法例原來所訂的嚴格，法例原本爲方便中小企的原意，已沒有作用。法例條文和會計準則重疊可能產生的問題，正在於此。 故此，政府重寫《公司條例》時，應該考慮刪除現行法例中與會計準則和上市規則重疊的條文，並把這些準則和規則的制訂權和修訂權，交給香港會計師公會和香港交易及結算所。這樣，《公司條例》就可以有一定程度的簡化。 當然，政府也可以仿照一些海外國家的做法，成立一個獨立機構，負責制訂所有的會計準則。有關的機構成員包括政府、香港會計師公會、其他會計業界專業團體、香港交易所及證監會的代表，以及其他業外獨立人士。 政府建議的企業分類，也值得深入討論。若按照企業規模劃分，規模接近分界線的企業，就很容易在兩個分類之間轉來轉去，法例對它們的披露要求也將頻頻轉變，這對投資者和會計師來說，並不方便。 海外的經驗，足以證明這一點。英國自從在《公司法》中把企業按規模分類以後，每隔幾年就要因應價格變動修訂中小型企業的定義。即是說，即使公司編制不變，經濟周期一旦出現急速變化，企業的披露要求亦隨之改變，這樣企業將可能無所適從；而轉換會計準則的過程中，原欲簡化的報表，可能變得更繁複。 較可行的企業分類法 我收集業界人士對諮詢文件的意見的過程中，整理出一個較可行的企業分類法，就是根據企業與公眾利益的相關性把

	企業分類，並按不同的分類設立不同的資料披露要求；因爲，對企業的資料披露要求，應該取決於其營運是否直接地影響公眾利益，而不是企業的規模。 　　我建議根據上述的分類法，把企業分爲「私人擁有公司」及「公眾利益相關公司」。後者須要有較高的資料披露要求，前者可以有較寬鬆的資料披露和認證水平要求。我建議董事、管理層和相關人士的總持股量不少於百分之七十五的非上市企業列爲私人擁有公司，並把現在該等公司在《公司條例》下須要履行的審計責任，以一個法定賬目審查取代，並按照國際通用的賬目審查標準作出具體規定。 　　「公眾責任相關公司」是指所有上市公司、保險公司、銀行、證劵公司、按《公司條例》註冊的慈善團體及董事、管理層和相關人士總持股量少於百分之七十五的非上市公司等等。由於這些公司的運作牽涉較大的公眾利益，我們需要較高的資料披露和認證水平要求，所以，現在《公司條例》對這些企業的審計要求應予保留，並可考慮收緊部分資料披露的要求。這個分類和按分類施加不同的資料披露要求，一方面可以減輕一些與公眾利益關係較小的企業在審計方面的工作和成本，另一方面也可減輕小型會計師事務所的工作量。而把審計程序改爲賬目審查，既不會造成會計服務需求的減少，亦對整體財務報表的質素有所保證，也減少中小企業的成本負擔。
	(Translation) **Decisions on Disclosure Requirements Should Better be Made in the Interests of the Public** The first phase of public consultation on the Rewrite of the Companies Ordinance (CO Rewrite) by the Government concluded at the end of last week. In the consultation paper, the Government has stated clearly that the direction of the CO Rewrite is to categorise local enterprises into large entities and small and medium-sized entities (SMEs) in terms of their assets, amount of business turnover and number of employees, and to impose different disclosure requirements on them accordingly. It is obvious that the policy direction of the Government is to align the requirements with the Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standard (SME-FRF & SME-FRS) issued by the Hong Kong Institute of Certified Public Accountants (HKICPA) in 2005. However, if the CO does develop in this direction, a series of problems may arise. First, the Government proposed providing for disclosure requirements technical financial reporting standards in the CO. Similar requirements and standards are also contained in the Hong Kong Accounting Standards (HKAS) issued by the HKICPA and the Listing Rules by the Hong Kong Exchanges and Clearing Limited (HKEx). As a result, there is an overlap of provisions. **Overlapping Provisions Should be Deleted** The greatest problem arising from the overlap of provisions is that as amendments need to be made from time to time to the HKAS and the Listing Rules in line with international trends, more frequent updates are made to them than to the CO by the Government. If synchronised changes to the legislation are not introduced when the HKAS or the Listing Rules are revised, there may be inconsistencies or even contradictions. Let me give an example. After the release of the SME-FRF & SME-FRS by the HKICPA in 2005, no consequential amendment was

	made to the CO. Some accountants are of the view that the disclosure requirements for SMEs in the existing CO are not consistent with the SME-FRF & SME-FRS of the HKICPA, and this has rendered the relevant provisions of the legislation meaningless. Another example is that the disclosure requirements for SMEs under the new SME-FRF & SME-FRS are more stringent than those stipulated in the legislation. Relevant provisions of the legislation which are designed to facilitate the operation of SMEs no longer serve any purpose. This is the problem that may arise from the overlap between the provisions of the legislation and the accounting standards. Therefore, in rewriting the CO, the Government should consider deleting the provisions of the existing CO that overlap with the accounting standards and the Listing Rules and entrusting the HKICPA and HKEx with the power to develop and amend the accounting standards and the Listing Rules respectively. This will, to a certain extent, simplify the CO. Of course, the Government can also follow the practice of some overseas countries by establishing an independent body responsible for drawing up all the accounting standards. Members of such independent body will include representatives from the Government, the HKICPA, other professional bodies of the accounting sector, the HKEx and the Securities and Futures Commission, and individuals from other sectors. The enterprise classification system proposed by the Government also merits in-depth discussions. If enterprises are to be classified by size, borderline cases will easily switch from one category to another and be subject to different disclosure requirements under the law. This will cause inconvenience to both investors and accountants. This point is well supported by overseas experience. In the UK, since the classification of enterprises by size was introduced under the Companies Act, the definition of SMEs is revised every few years due to price variations. In other words, even if the company establishment remains unchanged, the disclosure requirements for enterprises will change should there be any rapid changes in economic cycles, and enterprises may be at a loss as to what to do. In adopting the new accounting standards, enterprises may find the statements which should have been simplified even more complicated. **A more feasible option for enterprise classification** In the course of collecting stakeholders' views on the consultation paper, I have come up with a more feasible option for enterprise classification, i.e. classifying enterprises according to their relevance to public interest and introducing different disclosure requirements for different categories. It is because disclosure requirements for enterprises should be determined by the fact that whether their operation will directly affect public interest rather than by their size. I suggest categorising enterprises into "privately owned companies" and "companies with a public interest dimension" according to the aforementioned classification method. While the latter should be subject to stricter disclosure requirements, the former may be required to meet more lenient disclosure and certification requirements. I propose that unlisted enterprises with their directors, the management and relevant parties holding no less than 75% shares in total should be included as privately owned companies. The auditing obligations that these companies are currently required to fulfill under the CO should be replaced with a statutory audit review, with specific requirements to be drawn up according to universally accepted audit review standards.

	"Companies with a public interest dimension" refer to all listed companies, insurance companies, banks, securities firms, charitable organisations registered under the CO and unlisted companies with their directors, the management and relevant parties holding less than 75% shares in total, etc. As the operation of these companies is of wider public interest, stricter disclosure and certification requirements should be imposed. As such, existing auditing requirements for these enterprises under the CO should be retained, and the tightening of some of the requirements can be considered. The adoption of this classification system and the imposition of different disclosure requirements on different categories can reduce the accounting work and costs of enterprises with a smaller public interest dimension, and relieve the workload of small accounting firms. Replacing the auditing procedures with an audit review will not lead to a decrease in the demand for accounting services but will ensure the overall quality of financial statements and ease the cost burden on SMEs.
Sing Tao Daily (6 July 2007) by TSANG Chi-wai , Audit Partner of Deloitte Touche Tohmatsu	重寫《公司條例》提高港地位 各讀者可能注意到財經事務及庫務局於○六年年中開始重寫《公司條例》，並於上周五完成收集最新一輪有關會計及審計的條文之公眾徵詢意見。重寫《公司條例》之主要目的，是使本港之公司法更簡單易明，並能更有效配合香港作爲主要國際商業和金融中心的地位。 改善周年帳披露資料 最近有關會計及審計的條文之意見徵詢，是希望能改善周年帳披露的資料，以及節省公司的遵從成本及提高企業管治。 改善周年帳披露之建議，包括規定在董事報告書內須加入業務回顧，而當中必須述及公司所面對的主要風險和不明朗因素，以及預期業務未來的發展，以便提供更具分析性及前瞻性的資料。披露個別董事的酬金利益的建議，使有關董事酬金的條文更爲精簡和現代化，以及加入董事酬金報告書。 節省公司的遵從成本及提高企業管治之建議，包括控股公司可作合併帳匯報，公司之獨立資產負債表以註釋表列。此外，建議還包括檢討《公司條例》的會計披露規定、《香港財務報告準則》和《中小企財務報告準則》的相對角色，以及加強核數師的權力，包括索閱資料，但同時擴大核數師的責任。 除上述有關會計及審計之條文之建議，政府現正檢討《公司條例》內的其他條文，並會參考專責諮詢小組和常委會所提供的意見。這些專責諮詢小組由有關專業及商界團體的代表、學者及常委會成員組成。要知道重寫《公司條例》並不是一件容易的事。《公司條例》提供商界法律架構，來保障與公司事務往來之各方人士之利益及提供有效之企業管治之框架。因此須對不同之界別之意見徵詢特別多。按政府估計新的《公司條例草案》將於二〇一〇年第三季向立法會提出。希望重寫《公司條例》之後，香港作爲國際金融中心能營造出更良好之法制及營商環境。 德勤審計合夥人曾志偉

	(Translation) ***Smart Accounts*** **CO Rewrite Enhances Hong Kong's Status** As you may be aware, the Financial Services and Treasury Bureau launched the rewrite exercise of the Companies Ordinance (CO) in mid-2006 and completed the latest round of public consultation on the accounting and auditing provisions of the CO last Friday. The main objective of the exercise is to make our company law more user-friendly and to better support Hong Kong's role as a major international business and financial centre. **Improving the disclosure of information in annual accounts** The recent consultation on the accounting and auditing provisions of the CO is aimed at improving the disclosure of information in annual accounts, saving compliance costs incurred by companies and enhancing corporate governance. The proposals to improve the disclosure of information in annual accounts include making the directors' report a more forward-looking, analytical and informative document by requiring the inclusion of a business review covering, inter alia, the principal risks and uncertainties facing the company and the likely future developments in its business. The proposal to disclose individual director's remuneration packages is aimed at modernising and streamlining the provisions on directors' remuneration. There is also a proposal to introduce a directors' remuneration report. The proposals to save compliance costs incurred by companies and enhance corporate governance include allowing a holding company to prepare consolidated financial statements and include its own balance sheet as a note to the statements. Other proposals include reviewing the relative roles of the accounting disclosure requirements in the CO, the Hong Kong Financial Reporting Standards and the Small and Medium-sized Entities Financial Reporting Standard, and enhancing auditors' rights, including their access to information, while increasing auditors' responsibilities. Apart from developing the above proposals relating to the accounting and auditing provisions, the Government is also reviewing other provisions in the CO with inputs from the dedicated advisory groups comprising representatives from relevant professional and business organisations, academics and members of the Standing Committee on Company Law Reform. It should be noted that the rewrite of the CO is no easy task. The CO provides a legal framework for the business community to safeguard the interests of those parties who have dealings with companies and an effective corporate governance regime. It is therefore necessary for the Government to consult extensively the views of different sectors. The Government expects that the new Companies Bill will be introduced into the Legislative Council in the third quarter of 2010. It is hoped that following the rewrite of the CO, Hong Kong, as an international financial centre, can develop a better legal system and more favourable business environment.

Comments Received at Consultation Forums and Briefings	
By Dr Chan Chun-tung at the TID SMEC Meeting on 8 May 2007	1. Generally supported the proposals, in particular those regarding the enhancing of auditors' rights and the statement made by the directors concerning disclosure of information to auditors. 2. Pointed out that many firms had chosen to incorporate in Macau instead of HK which would reduce the tax income of HK. *(Remarks: We undertook to reflect the issue to the Treasury Branch.)*
By Prof Cheung Yan-leung at the TID SMEC Meeting on 8 May 2007	1. Supported the improving of disclosure and transparency of the information in the annual accounts. 2. Considered that the SOX was too strict which discouraged the listing of companies in the US, many chose to list in HK instead.
By Mr Tang To at the TID SMEC Meeting on 8 May 2007	1. Considered that the disclosure of directors' remuneration packages would endanger the personal safety of the directors and make it easier for them to be "head-hunted". 2. What was the difference between small companies and big corporations in respect of their compliance requirements? 3. Doubted the need to extend the right of inspection of the accounting records of a company to "other officers" and consider it necessary to make clear the definition of "other officers". 4. [Considered that it was unfair that a person who failed to comply with the request of the auditors for information would commit an offence, unless he could prove that it was not reasonably practicable to comply with the request.]
By Mrs Lin Lau Shuk-ying at the TID SMEC Meeting on 8 May 2007	Generally supported the proposals. Considered it difficult to enhance the rights of auditors of small and medium auditing firms.
By Mr Tam Wai-hung at the TID SMEC Meeting on 8 May 2007	Suggested to make clear the definition of "small group" of companies as well as guarantees companies.
By Mr Lam Yim-nam at the TID SMEC Meeting on 8 May 2007	Pointed out that the Basel II Frameworks, which aimed to ensure that capital allocation would be more risk-sensitive, would have impact on banks as well as SMEs.

At HKICPA Forum on 21 May 2007	Now, Hong Kong is very politically sensitive, especially in human rights. One of key proposals is to disclose directors' remuneration package and subject to audit. This may be rejected by the human rights group or rejected through Human Rights Bill. Directors may argue that directors' remuneration would involve their privacy. Please consider this point carefully.
By Debbie Annells at HKICPA Forum on 21 May 2007	Concern over the huge workload of auditors nowadays and suggest abandoning audit requirement for small companies to relieve the work of auditors
At Consultation Forum on 4 June 2007	It is proposed that "the holding company and every officer of it who is in default will commit an offence if the holding company fails to take all steps reasonably available to obtain the information, explanations or other assistance from the relevant persons or parties as requested by the auditor." Some participants considered it too strict to employees.
At Consultation Forum on 4 June 2007	In the existing practice, if the management fails to provide the relevant information to the auditors, it will usually resulted in an auditor's report without "true and fair view" In the proposal, the management of the company will commit an offence if the relevant information is not provided. There were queries that it would be unfair to the management.
At Consultation Forum on 4 June 2007	Regarding the directors' report, it is recommended to put the information in a more analytical and forward-looking way. There were questions on the target audience of such report. There were suggestions that if the target audience was shareholders, there should be an exemption for such report if a number of shareholders agreed so.
At Consultation Forum on 4 June 2007	There were comments that HK incorporated companies should be allowed to file accounts prepared in accordance with IFRS rather than HKFRS if the shareholders would like to do so.
At Consultation Forum on 4 June 2007	There were queries that there might be overlapping between the proposed introduction of simplified accounts in the directors' report and auditors' reports at the end of the annual reports.
At Consultation Forum on 4 June 2007	There were queries regarding the right of other officers to inspect accounting records because a lot of information are sensitive and confidential. "Other officers" should be carefully defined.
At Board Meeting of Federation of Hong Kong Guangdong Community Organisation on 21 June 2007	Concern over the proposed requirement of separate directors' remuneration report to be prepared by an unlisted company incorporated in Hong Kong if holders of not less than 5% of the issued share capital so request.

Note

1. Paul MOK stated in his submission that the response represented his personal views only.
2. Victor HO advised that the items underlined are those that merit serious consideration by the administration.
3. Respondent A: The respondent has expressly requested that the identity of the respondent should not be disclosed.